

Supplement to the
National Municipal Review

December, 1935

Volume XXIV, No. 12

Municipal Control of Retail Trade in the United States

By The BUREAU FOR RESEARCH IN MUNICIPAL
GOVERNMENT, HARVARD UNIVERSITY

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Published by the

NATIONAL MUNICIPAL LEAGUE

309 EAST 34th STREET, NEW YORK, N. Y.

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Price, Seventy-five Cents

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Foreword

THIS study of Municipal Control of Retail Trade in the United States, prepared by Dr. Franklin W. Ryan, is particularly timely. It is a pioneering effort in a field of much current interest, and the Bureau of Foreign and Domestic Commerce is glad to recommend its study by those interested in or affected by municipal control over retailing.

American cities are unique among the world's municipalities in that they have greater freedom in self-government than can be found in most other nations. This freedom enables them to design local regulations for trade which are closely attuned to local conditions.

* *

Local laws, written and passed in the common interests of retailers and consumers, serve the dual purpose of elevating the competitive level of retail trade and of assuring consumers that they can trade in a well organized and administered market.

This study presents a list and a description of the chief features of a number of sample municipal ordinances which contain suggested standards. Many cities have well worked out ordi-

nances dealing with retail trade which are functioning smoothly. On the other hand, some cities are laboring under difficulties born of inconsistency and lack of direction or coördination in respect to their retail trade relations.

* *

This study was conducted by Dr. Ryan under the direct supervision of The Bureau for Research in Municipal Government of Harvard University. A wealth of valuable material is presented, and although the Bureau of Foreign and Domestic Commerce had no part in its assembly or analysis, and to this extent, of course, is not in a position to officially endorse all statements and figures contained in the report, it is believed the study is a forward step in a field of increasing importance to producers, distributors, and consumers of the country, and to those responsible for the laws of our municipalities controlling retail trade. To this end, its careful study is recommended.

N. H. ENGLE, Acting Director
Bureau of Foreign and Domestic
Commerce



Introduction

THIS study of the problem of municipal control of retail trade, based upon a comprehensive, national research in this field, was undertaken in 1933 by the Bureau for Research in Municipal Government in Harvard University, under a grant of Rockefeller Foundation funds through the Harvard University Committee on Research in the Social Sciences.

The study was motivated by the fact that the relations between local government and business are growing rapidly in extent and complexity and that they have not been subjected to the scrutiny which their importance appears to warrant. This is in sharp contrast to the field of federal and state relations to business, which has attracted so large a measure of popular and research interest. It was also felt that the subject offered a further opportunity to demonstrate the advantage of combining the techniques of two of the major social sciences, modern business administration and political science, in the handling of materials common to each.

In undertaking this work the Bureau was confronted with the problem of finding a research associate whose training and experience in both business and government were such as to qualify him for the work of collecting, evaluating, and organizing the necessary material. This man was found in the person of Dr. Franklin W. Ryan. Dr. Ryan is a graduate, and a former member of the teaching staff, of the Harvard Graduate School of Business Administration, has held

various executive positions in large business organizations which have brought him into close contact with governmental regulations, is a widely known publicist, and is at present with the United States Government in Washington, D. C., as senior economic analyst of the Federal Home Loan Bank Board, the Home Owners' Loan Corporation, and affiliated corporations. To Dr. Ryan's ability and conscientious effort must be attributed the primary responsibility for such value as this study may possess.

The Bureau for Research in Municipal Government has had the advantage of the generous interest of the Graduate School of Business Administration in Harvard University, of the staff of the Harvard University Committee on Research in the Social Sciences, and of the United States Bureau of Foreign and Domestic Commerce, as indicated by the foreword prepared by N. H. Engle, its acting director. Space precludes specific acknowledgment of the assistance so freely given by chambers of commerce, local and state municipal bureaus, business executives, mayors, and city clerks in more than four hundred cities and towns throughout the United States.

The study, in its present abbreviated form, does not purpose to give a final or definite answer to many of the perplexing questions raised by the relations of municipal corporations to trade mechanisms. It is hoped that the analysis presented may throw added illumination upon an important subject heretofore

partially obscured, and that the methods used and the facts produced may stimulate further inquiry.

In orienting this study of local government control of retail trade, Dr. Ryan departs from the conventional methods and categories and develops a new approach to the subject by which there is first presented a list of all the elemental activities of marketing as found in operation in retail stores, and then each activity is checked to see what is typically done by municipal corporations to control it. By this pragmatic and inductive procedure, there is developed a measurement of municipal control of retail trade in terms of business elements.

There is next developed another system of measurement by which each type of retail store is checked against existing municipal ordinances. This reveals the approximate extent of control and shows that about half of all classifications of retail stores are typically subject to municipal ordinances, while the other half are not.

Next, based upon more than one hundred different kinds of municipal ordinances, there is developed a list of ordinances to control retail trade which are generally considered necessary and desirable in any American city. This list has been checked by leading retail trade boards, merchants associations, and chambers of commerce and, in its final form, has received wide approval. Control, to be effective, must be administered. Thus, there is presented a study of mechanisms and devices of municipal control of retail trade.

Space considerations in this abridged report have necessitated the elimination of chapters on subjects such as the municipal control of food regulation and inspection, zoning regulations for retail trade, the history of municipal control of retail trade, and others.

MILLER McCLINTOCK, Director
Bureau for Research in Municipal
Government, Harvard University

September 1, 1935

"It is the city government which most intimately concerns itself with the basic activities of the people, which twenty-four hours a day guards the food they eat, the air they breathe, the water they drink."

Daniel W. Hoan, Mayor of Milwaukee; President, United States Conference of Mayors

Municipal Control of Retail Trade in the United States

A composite picture of typical or characteristic local practice in cities of 30,000 or more

FRANKLIN W. RYAN, *Research Associate*
MILLER McCLINTOCK, *Director*

Bureau for Research in Municipal Government, Harvard University

CHAPTER ONE

OBJECTIVES

THE objectives of this study are: (1) to describe, classify and analyze the different types and forms of ordinances and other devices used by American cities for the control and regulation of retail business; and (2) to make the presentation concrete by the results of research into the actual procedure as found in various cities. On the basis of this study and research, a composite picture is presented of what may be called typical or characteristic local practice as regards municipal control of retail trade in cities of 30,000 population or more. Smaller cities, even as small as 10,000 population, are not excluded from the study, however. They are important for purposes of perspective.

Municipal government is not the only form of governmental control over local trade. The inquiry must bear in mind the instances where federal and state governments exercise direct local control within a city. Main emphasis in this study, however, is on municipal control. Furthermore, it must always be kept in mind that a city government is a municipal corporation and the creature of the state and that all power which a city exercises in the control of business was given or delegated to it by the state, either expressly or by implication, and that every city is responsible at all times to the

state. From this point of view, Chicago's local government must be considered in the light of the legal philosophy underlying the entire system of municipal government in Illinois. In discussing local government in Boston, attention must be given to both the powers granted to the city by the state and the powers reserved by the state. Municipal control in St. Louis must be analyzed in relation to the government in Missouri.

These points were recognized in the selection of the original list of cities for study. Since municipal control is always state-created, it was desirable to select not only a wide variety of cities but also a wide variety of states. The original list selected for special study was as follows:

- *New York City
- *Philadelphia
- *Chicago
- *Buffalo
- *Newark
- *Washington
- *Providence
- *New Haven
- *Baltimore
- Norfolk
- *Richmond
- Cleveland
- Detroit
- *Milwaukee
- *Cincinnati
- Indianapolis
- Louisville
- *Trenton

- *Wilmington, Del.
- Wheeling, W. Va.
- Charleston, S. C.
- Winston-Salem, N. C.
- Memphis
- Birmingham
- Atlanta
- Jacksonville
- Daytona Beach
- Little Rock
- New Orleans
- St. Louis
- Kansas City, Mo.
- Kansas City, Kan.
- Minneapolis
- Omaha
- Cedar Rapids, Iowa
- Sioux Falls, S. D.

Wichita
Oklahoma City
Houston, Tex.
Phoenix, Ariz.
Salt Lake City
Denver
Cheyenne
Butte, Mont.
Boise, Idaho
*Los Angeles

Sacramento
*Portland, Ore.
Spokane, Wash.
*San Francisco
*Boston
*Cambridge, Mass.
Somerville, Mass.
Bangor, Me.
Concord, N. H.

*These cities were studied by field visits.

LIMITATIONS OF THE PRESENT STUDY

This summary is limited to the study of municipal ordinances enacted to control retail sales of *commodities*. There are many cases where municipal control of the sale of personal services is exercised in ways similar to those used for sales commodities, but they will be discussed only incidentally in this connection.

Another field of municipal control of retailing which can receive only a small amount of attention is that of municipal fairs and municipal markets. From a historical point of view this field is of great importance. Nevertheless, the special field of the retail store is complete in itself and the problems of its relation to municipal control are distinct from those of municipal markets. Moreover, a great deal has been written on fairs and markets, while very little has been written on the subject of municipal control of retail stores.

The present inquiry follows the trend shown by several other parallel lines of research in related fields of direct municipal control, which have made conspicuous progress during the last few years.

The subject of zoning and city planning, which was taken up shortly after the turn of the century as a sort of municipal hobby, has now become an organized science. Since 1915 an entirely new body of literature has been developed in this field.¹ Whereas,

¹The best guide to the literature of city planning and zoning is the *Manual of Planning Information*, and *Planning Information Up-to-Date*, by Theodora Kimball Hubbard and Katherine McNamara, published by Harvard University Press. Among some of the leading

thirty years ago, very few municipalities had considered the problems of zoning and city planning, today practically all of our largest cities have not only enacted complete and detailed zoning codes together with their accompanying administrative organizations, but have also worked out comprehensive plans for the future and have spent millions of dollars putting them into operation.

Perhaps the most rapid and most intensive forward development in the field of applied science of municipal regulations has been in the field of street traffic control. Several of our leading American cities such as Boston, Chicago, Kansas City and Los Angeles have advanced from the early elementary type of street traffic control, as contemplated in ordinances of a decade ago, to the development and formulation of their own individualized scientific made-to-measure systems of traffic regulation, which have raised their street traffic efficiency, harmonized their signal systems, reduced congestion and accidents and increased the general comfort of both the motor-driving public and pedestrians.²

reference works listed are: Weir, L. H., *Parks, A Manual of Municipal and County Parks*, New York, A. S. Barnes & Co.; C. B. Purdom, *The Building of Satellite Towns*, London, J. M. Dent & Sons; Nolen, John, *New Towns for Old*, Boston, Marshall Jones Company; Robinson, Chas. M., *City Planning*, New York, G. P. Putnam's Sons; Nolen, John, Editor, *City Planning; a Series of Papers*, New York, D. Appleton & Company; Lewis, Nelson P., *The Planning of the Modern City*, New York, John Wiley & Sons. See also special pamphlets issued by National Municipal League.

²A good summary of the principles of street traffic control is Miller McClintock's *Street Traffic Control*, New York, McGraw-Hill Book Company. See also Taylor, C. P., and McClintock, Miller, Editor, *Traffic Officers Training Manual*, Chicago, National Safety Council. See also the following special traffic surveys prepared under the direction of the Harvard University Bureau for Street Traffic Research, McClintock, Miller, Director; *Chicago Street Traffic Survey*, 1926, *Providence Traffic Survey*, 1928, *San Francisco Street Traffic Survey*, 1927, *Boston Traffic Survey*, 1928, and *Kansas City Traffic Survey*, 1930.

SCOPE OF THE STUDY

Below is a diagram which illustrates the relation of the particular field of municipal control of retail trade to the larger fields of government control of business and social control of business.

Municipal control of retail trade may be represented by the inner square in the northeast position. Coördinate with it is municipal control of all other forms of marketing which are not retailing. There are also two other inner squares: federal and state control of retail trade and federal and state control of marketing other than retail trade. These four inner squares make up government control of marketing. If federal government control were separate from state control and if wholesaling were given a separate

area in the diagram, there would be nine squares instead of four.

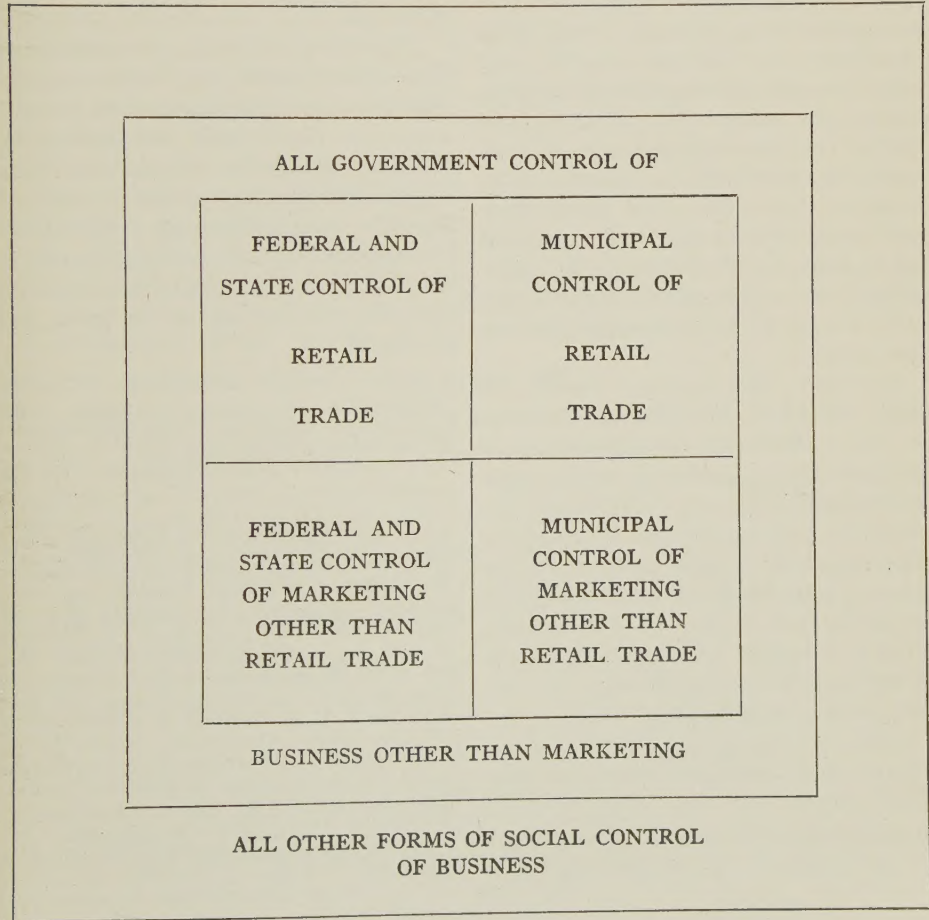
On the other hand, marketing is not all there is of business. Just outside of the inner squares of government control of marketing, is an area representing government control of business other than marketing.

But government control is not the only kind of social control of business. The outer area of the diagram is intended to represent the field of all other forms of social control of business in addition to government control.

MUNICIPAL GOVERNMENT AS A BUSINESS ENTERPRISE

When an examination is made of the wide range of activities of municipal

TABLE I



administration other than the functions of government, such as the control of municipal finance, supervision of parks and playgrounds, operation and maintenance of streets, public service enterprises, municipal buildings, bridges, street-car lines and subways, and the acquisition and construction of public improvements, a municipality is seen to bear a striking resemblance to a large business enterprise. Municipal government in the United States today is relatively much more of a business enterprise than is state or federal government.

Leading American cities can be found with codes of ordinances, supposedly standard practice instructions for the administration of modern cities, which are not only illogical, contradictory, badly organized and archaic but, in some phases of city administration, have little connection with what is being done. Hundreds of ordinances are not only absurd but are never carried into effect. Other large cities with complex and highly detailed activities are without codes or ordinances to regulate many forms of procedure. Still other cities enact new ordinances every year but never make a compilation so that even officials have great difficulty in finding out what are the city's standard practice instructions.

Certainly this apparent neglect by many American municipal governments of one of the fundamental principles of business efficiency should receive more than passing attention. If it is generally desirable to reorganize and remodel city charters to bring them in line with the *form* of business-like management, would it not be well to consider the question of going a step farther to apply this scientific principle of standard *practice* instructions to municipal codes?

The present inquiry, because of its limitation to municipal control of retail trade, cannot cover the entire scope of municipal control from this point of view. It only surveys and analyzes one field

out of several different fields in which scientific principles of efficiency might well be applied in the formulation of sound procedure. Nevertheless, at the outset, it is well to point out some of the possibilities existing today in the United States for constructive research in the field of municipal government along lines of business efficiency.

MUNICIPAL CODES AS STANDARD PRACTICE INSTRUCTIONS

This is not an appropriate place for a detailed discussion of the merit of different types of city charters. They are ably discussed in numerous books and articles.³ Nevertheless, in connection with the subject of municipal codes, it appears that a fundamental principle of scientific business management is seriously involved, which has received little attention.

Whether there is a mayor-and-council plan, a commission plan, a city manager plan or some other plan of city government, a city's code of ordinances, whether compiled or not compiled, constitutes an important part of its standard practice instructions—its formulated written rules and standards of procedure which the city administration is expected to follow in carrying out its plans and purposes.

Great business enterprises, including automobile companies, railroads, food companies, chain store systems, manufacturers of electrical equipment, and the

³The City Manager, by Harry A. Toulmin, is a good presentation of the subject. In *Municipal Government and Administration*, by W. B. Munro, Chapters 21 and 22, are found excellent discussions of commission and city manager forms of government. At the end of each chapter bibliographies are given. For the latest developments in the city manager field, the National Municipal League, 309 East 34th Street, New York City, is the best source of information. Also see the year-books and other publications of International City Managers Association, 850 E. 58th Street, Chicago, Illinois. For the story of Cincinnati, see Charles P. Taft, *City Management*; The Cincinnati Experiment, published by Farrar & Rinehart.

public utility companies, in their application of the principles of scientific management, have exercised painstaking care in the application of this scientific principle.⁴ Indeed, they could not have attained their present places of importance in the industrial world without it. But in the administration of some American cities, this principle of scientific standard practice instructions has been largely neglected.

POSSIBILITIES OF MUNICIPAL STANDARDIZATION

In the army, it is recognized that general military efficiency depends on the efficiency of the ultimate unit of the army which is the company and upon the captain or company commander. But in the field of American government this principle receives inadequate recognition. The city is the ultimate unit of government yet too little attention is given by public officials to the question of high standards for municipal functions.

When Napoleon Bonaparte was First Consul of France, he applied to the Civil Code the principles of management which had enabled him to win decisive military victories. In this work he obtained the help of the best legal minds he could secure. But he did not

stop with national government nor with departmental government. He worked down to the point of the ultimate incidence of government, the point where city government comes into continual contact with community activities. The "Code Napoleon" standardized municipal procedure. He worked out the standard practice instructions which are still the groundwork for municipal government in France and several other European countries and which continue to have a profound influence on municipal government all over the world.

In this country many influences have been brought to bear against standardization and against municipal uniformity rather than in favor of them. Currently, these influences are manifested by such movements as "municipal home rule," designed to give increased scope for local political autonomy. To a degree this greater freedom of action has been off-set by a tendency for state governments to assume exclusive or supervisory control over certain types of governmental functions. Without entering into the general issue of state or local control, it is certain that, so far as governmental activity affects local business operations, there is a serious need for the application of more uniform and business-like methods.

CHAPTER TWO

MEASURING THE EXTENT OF MUNICIPAL CONTROL OF RETAIL TRADE IN TERMS OF THE FUNCTIONAL ELEMENTS OF MARKET DISTRIBUTION

MUNICIPAL control of retail trade involves much more than the simple transfer of ownership that takes place when goods are sold. It is control of a considerable range of retailing elements of varying significance.

Retail trade may be defined as that final stage in the process of market dis-

tribution, where commodities pass into the possession and ownership of final purchasers. It includes all direct selling to ultimate customers. The entire movement or flow of goods by successive stages of sales from raw material producers, through the hands of manufacturers and middlemen, to retailers and finally to ultimate customers, is known as marketing. Retailing is the final and, in many ways, the most important stage of the process.

Brief definitions of retail trade are usually inadequate, because, in the

⁴The principle of written standard practice instructions is given an important place in the writings of leading authorities on scientific management. See Frederick W. Taylor, *The Principles of Scientific Management*. Pages 117-118, and Harrington Emerson, *The Twelve Principles of Efficiency*, Chapter 13.

stressing of actual sales of commodities, there are many other activities connected with retailing which are neglected. These may be more important than actual sales. In order to analyze and classify the various phases of municipal control over retail trade, a wide range of these functional elements, as actually performed in the world of trade, should be considered and studied carefully. There are today some activities of retailing which receive a considerable amount of attention by city governments, while, on the other hand, there are other selling activities which receive little or no attention.

To show the extent of municipal control of retail trade in terms of the activities of distribution that are controlled, it was found desirable to aggregate a composite array of elemental activities of distribution of commodities, which are typically found in operation in various kinds of present-day retail stores. A search of current literature covering all phases of distribution reveals no lists of this kind.

There is no such thing as business in general nor municipal control of business in general. All government control of business is concrete control of specific marketing elements such as buying, pricing, selling, delivery, accounting, radio advertising, credit-extending, and similar functions. Therefore, the first task in clearing the ground for this survey was to prepare as complete a list as possible of all these marketing elements.

This composite list of some 120 elements of retail market distribution, derived especially for the purposes of the present study, is shown in classified form in Table II. The work of compiling these activities necessitated a study of six basic groups of sources of names of elements of market distribution.⁵

⁵The list of activities in Table II was originally presented in an article entitled "Functional Elements of Market Distribution," by Franklin W. Ryan, *Harvard Business Review*, January 1935.

These groups of sources were as follows:

1. Actual retail store experience and procedure. Several kinds of retail store organizations were studied;
2. Business case-books, problem books, and class materials for the teaching of marketing, retailing, advertising and sales management by the business case system; (Note that this does not mean a study of law cases.)
3. Existing laws, statutes and ordinances of national, state and municipal governments;
4. Various kinds of retail store expense analyses;
5. Historical sources running back 4,000 to 5,000 years;
6. College textbooks for the teaching of marketing, most of which are based on a list of so-called "marketing functions."

But, of necessity, from the nature of the task involved, this listing of marketing elements is not perfect. No presentation of actualities can be perfect. Perfection is found only in axioms, formulas, generalities, and other logical devices of the realm of pure ideas. There is an almost infinite variety of ways in which these functional elements and their functional categories can be listed and arranged, and the list given in Table II is only one out of a great many possible lists. It was not compiled with an idea of finality but merely as a working tool.

The notion that the concept of a list of retailing functions is different from the concept of a list of marketing functions, is not tenable. Retailing is the final step in the marketing process and, therefore, retailing is marketing. A list of marketing activities, if properly put together, is *per se* a list of retailing activities.

The list of 120 marketing elements in Table II is a classification of activities from the entire process of distribution, derived to a large extent from the retail trade, but not by any means limited to retailing. While clearly valid for the retailing process, it is, with a few minor

TABLE II

THE FUNCTIONAL ELEMENTS OF MARKET DISTRIBUTION CLASSIFIED BY CONVENIENT GROUPS

I. Providing Location, Building, and Equipment	Selection and continuance of location Providing and maintenance of building Providing and maintenance of equipment and fixtures Layout of building, equipment, and fixtures Providing of heat, light, water, gas, ice, power, and sewer connections	XIII. Merchandising and Buying	Merchandising research Merchandise control Style administration Buying merchandise Paying for merchandise Transportation to store or plant Receiving and assembly of merchandise Storage of merchandise Standardization, inspection, and grading Arrangement, rearrangement, packing, and packaging Processing, transformation, alteration, and other manufacture Adapting goods to the market Branding and trade-marking Keeping goods clean and attractive
	Obtaining the right to exist as a business by license Sharing costs of government by payment of taxes Conforming to city planning and zoning regulations for location of building or plant Conforming to building, electrical, elevator, plumbing, and sprinkler codes, and other similar physical regulations Conforming to traffic ordinances governing use of streets for the movement of goods Conforming to ordinances governing the use of minor highway privileges for awnings, signs, windows, vaults, etc. Protection of employees against disease, accidents, etc. Conforming to laws and ordinances for the protection of public health Conforming to general laws for the regulation of business Maintenance of standards of business ethics Internal policing to protect the business		
II. Cooperation with Government		XIV. Publicity	Advertising research Newspaper advertising Direct mail advertising Radio advertising Advertising in theaters, motion picture shows, street cars, suburban trains, and buses Outdoor advertising Distribution of circulars Distribution of samples Sales house organs Overcoming unfavorable publicity Other forms of building goodwill Coordination of advertising with selling Display of goods for sale on owned premises Display of goods for sale on sidewalks and other publicly owned space
III. Legal Action	Use of legal devices to protect the business enterprise		
IV. Administration of Personnel	Selection and placing of employees Training employees Paying employees by salary and on commission Stimulation of sales force Welfare work Promotion of morale; and group relations Retaining special marketing counsel and other professional services	XV. Selling	Sales research, market analysis, and interpretation of sales statistics Selecting and developing channels and methods of distribution Sales planning Budgeting sales, and sales operations Solicitation of customers, direct House-to-house selling Specially planned sales talks Guaranties Determination of terms of sale Transfer of ownership of goods Measuring, weighing, counting, and checking goods sold Delivery of goods to customers Sales counsel to customers Service in connection with certain items, such as radios, refrigerators, automobiles, etc. Special services to customers, such as parking space, rest rooms, telephone booths, nurseries, etc. Elevator and escalator service Control of movement of people through store or plant Substitution Satisfying customers' complaints Returns, allowances, adjustments, exchanges in connection with goods unsatisfactory to customers Reselling goods to dissatisfied customers Trade-in allowances on sales of new goods Trading stamps Sales by vending machines
V. Communication	Mail correspondence and files Correspondence by telegraph Use of telephone Messenger services		
VI. Traveling	Traveling by executives and employees in performance of their work	XVI. General Management and Strategy	Building a marketing organization General management of the organization Departmental management and floor supervision Territorial organization Providing capital for use in the business Financial management Paying interest on borrowed capital Adjustments of policies to meet conditions Appraisal of current market trends from market news Forecasting future market trends Assumption of risks Reducing risks by management Shifting risks by insurance, hedging, and other devices Corporation life insurance Pricing of goods Price maintenance Membership in trade associations Membership in better business bureaus Meeting competition Marketing strategy
VII. Participation in Community Affairs	Public relations Sharing in local activities Contributions and donations		
III. Supplies	Purchase of supplies Receiving of supplies Use of supplies		
IX. Disposal of Waste	Disposal of waste items such as ashes, crates, cartons, boxes, waste paper, etc.		
X. Accounting and Statistical Control	Accounting Expense control Inventory and stock-turn control Statistical records		
XI. Credits and Collections	Credit management Collections Losses from bad debts		
XII. Administration of Cash	Receiving of cash Disbursing cash Depositing cash in banks Obtaining special police protection in cases of large movements of cash Use of armored cars		

qualifications, also valid for all wholesaling, jobbing, manufacturing, and extractive marketing activities as found in the productive-distributive process.

Of the list of retailing activities in Table II, the following group is ordinarily free from either federal, state or municipal control.

Adapting goods to the market
 Adjusting policies to meet conditions
 Advertising research
 Appraisal of current market trends from market news
 Arrangement and rearrangement of goods
 Assumption of risks
 Budgeting sales and sales operations
 Building a marketing organization
 Cash, disbursing of
 Cash, receiving of
 Contributions
 Coördination of advertising with selling
 Departmental management and floor supervision
 Display of goods for sale on own premises
 Expense control
 Financial management and financing
 Forecasting and judging market trends
 General management
 Good-will, building of
 Inventory and stock-turn control*
 Keeping goods clean and attractive*
 Layout of store or plant
 Marketing strategy
 Membership in better business bureaus
 Membership in business associations
 Merchandise control
 Overcoming unfavorable publicity
 Packing and packaging*
 Price maintenance*
 Pricing of goods*
 Promotion of morale; and employee group relations
 Public relations
 Reducing risks by management
 Reselling goods to dissatisfied customers
 Retaining marketing counsel and other professional services
 Sales counsel to customers
 Sales house organs
 Sales planning
 Sales research, market analysis, and interpretation of sales statistics

Services in connection with products such as radios, automobiles, etc.

Selection and development of channels of distribution

Sharing in local activities

Special services to customers such as rest rooms, telephone booths, parking space, sub-post offices, etc.*

Specially planned sales talks*

Standardization, inspection and grading*

Statistical records and studies

Stimulation of sales force

Style administration

Substitution*

Territorial organization

Trade-in allowances on new goods*

Training employees

Traveling

*The asterisk denotes some activities which are partially subject to state or federal legislation and control.

In other words, retail distribution is rather free from government control in its more important activities which have to do with strategy, general policies and the making of profits. But profits are very vital to a business and if taxation and other forms of restrictive controls become increased beyond certain points, freedom may be very much reduced.

The following activities of local business are ordinarily subject to either state or federal control or both, and are seldom or never subject to control delegated to municipalities.

Accounting

Branding and trade-marking

Buying merchandise

Cash, depositing in bank

Collections

Correspondence by mail and telegraph

Credit management

Determination of terms of sale

Direct mail advertising

Guarantees

Insurance on lives of executives

Internal policing to prevent theft*

Legal devices, use of

Losses from bad debts

Maintenance of standards of business ethics

Meeting competition

Paying employees and salesmen
 Paying for goods bought
 Paying interest on borrowed capital
 Providing capital for use in the business
 Price maintenance*
 Pricing of goods*
 Radio advertising
 Returns, allowances, adjustments, and ex-
 changes*
 Satisfying customers' complaints*
 Selection and development of channels of dis-
 tribution*
 Selection and placing of employees
 Sharing cost of state and federal government
 by paying taxes
 Shifting risks by insurance, hedging, etc.
 Storage**
 Supplies, administration of buying and selling
 Telephone, use of
 Transfer of ownership

*The asterisk denotes activities only partially controlled by state and federal governments.

**In the case of storage, most states have codes of statutes to govern it but cities also have ordinances substantially the same as the state laws so that the control may be said to be a sort of joint state and municipal control. Such a situation, however, is not limited to storage. All municipal ordinances are enacted in line with powers delegated to cities by their states.

It can thus be seen before arriving at the question of municipal control of the various elements of distribution, that a great many of the elements are found to be either free from any kind of government control or subject to forms of federal or state control which are seldom or never delegated to municipal corporations.

One important group of functional elements including merchandise control, pricing, inventory and stock-turn control, expense control, adjustment of policies, sharing in local activities, budgeting and forecasting are ordinarily not subject to any form of government control, while another group which includes transfer of ownership, credits, collections, branding and trade-marking, packing and packaging, use of telephone, meeting competition and communication, are subject to state or federal control which is practically never delegated to municipalities.

Before listing the elements of distribution which are typically controlled by municipal governments, it must again be emphasized that a municipality is the creature of the state and that these powers to control certain activities of retailing are delegated to it by the state.

Below are listed the elemental activities of retail distribution which are normally controlled by municipal corporations under powers delegated to them by their states.

Control of movement of people through the
 store*
 Delivery
 Display of goods on sidewalks or on other
 municipally owned space
 Elevator and escalator service
 House-to-house selling
 Internal policing*
 Inventory and stock-turn control**
 Keeping goods clean and attractive**
 Location, selection and continuance of
 Measuring, weighing, counting, and checking
 of goods sold
 Motion picture advertising and other adver-
 tising in theaters**
 Obtaining the right to exist as a business by
 license
 Obtaining special protection for large move-
 ments of cash and other emergencies
 Outdoor advertising and signs
 Processing, transforming, conditioning*
 Protection against fire
 Protection of public health
 Protection of employees*
 Providing and maintenance of building or
 plant*
 Providing and maintenance of equipment and
 fixtures
 Providing heat, light, water, gas, ice, power
 and sewer connections
 Receiving and assembly of merchandise
 Returns, allowances, exchanges**
 Satisfying customers' complaints**
 Sharing costs of municipal government by
 paying taxes
 Solicitation of customers*

*These elements of retailing activity are only partly controlled by municipalities.

**These are so little controlled by municipal corporations in the United States that one may regard such control as almost negligible.

Storage and warehousing
 Transportation of goods
 Waste disposal

However the 120 elements in Table II are not of equal weight.

A considerable number of marketing executives were asked to analyze these activities and select the twenty most important marketing elements as performed in their establishments. As a result of this analysis, the following list was taken as most representative of the choices of these men.

1. Selling
2. Merchandise control
3. Buying
4. Pricing
5. Inventory and stock-turn control
6. Building sales organization
7. Expense control
8. Satisfying customers' complaints
9. Meeting competition
10. Display of goods
11. Advertising and sales promotion
12. Layout
13. Delivery
14. Use of telephone in selling
15. Credit management and collection
16. Market analysis and research
17. Marketing strategy
18. Building morale among employees
19. Membership in trade associations
20. Accounting

Of all this list of marketing elements to which executives give most of their thought and attention, only "delivery" is generally subject to municipal control. Inventories and stock-turn are subject to municipal control only in a few cities which have ordinances governing so-called "closing out" sales.

SIGNIFICANCE OF DELIVERY CONTROL

The wide ramifications of certain types of municipal control of retail trade may be illustrated by a specific consideration of the implications of municipal control over the element designated as "delivery." In its broader sense "delivery" comprehends, not only the movement of

merchandise from the retail outlet to the ultimate consumer, but, likewise, the movement of commodities into the community, to warehouses, and thence to the outlet. In addition, the element of delivery has a bearing upon the entire problem of buying power mobility. This affects basically the distribution of retail trade outlets, the current value of leases and business property, and the effectiveness with which a particular establishment may attract and exploit buying power.

The significance of control over delivery is brought out by A. W. Shaw, one of the pioneers in modern marketing practice. He defined distribution as the application of motion to materials as they move from times, places, forms, and conditions in which they have little value, to times, places, forms, and conditions where they have considerable value. Thus, mobility of commodities and persons is essential to the conduct of retail trade activities.

The importance of intra-market mobility has been emphasized in recent years by the findings of the traffic and trade researches conducted by the Bureau for Street Traffic Research in Harvard University. These studies have revealed significant correlations between ease and freedom in daily population movements and trade values. They have gone so far as to predicate the definition of functional trading areas upon the patterns of daily population movements and, likewise, the sales potentials of particular outlets upon the quality and quantity of the buying power movements to which outlets are exposed. The relation of the municipal corporation to the "delivery" function is illustrative of the indirect as well as direct manner in which municipal powers may affect trade activities. Directly, the municipality controls "delivery" only through vehicle and traffic regulations but indirectly it may exercise a far more important control through the

provision or lack of provision of transportation and traffic facilities.

DESCRIPTION OF CONTROL OVER OTHER ELEMENTS

Rearranging the residual list of retail functions, which are ordinarily subject to municipal control, they may be outlined as follows:

1. In many cities, the municipal government exercises a form of control over retail business by means of license requirements which is, in effect, a control of business existence.

2. In most of the states, the power to inspect and regulate weighing and measuring devices is delegated to municipal corporations as a mandatory police power, although in a few states, it is discretionary.

3. In nearly every city, public health demands that certain items of food and drink be regularly inspected in order that they shall measure up to proper standards of quality.

4. The majority of the larger cities have city planning and zoning ordinances and codes which impose certain restrictions governing the location of retail stores.

5. Nearly every city has its building codes which must be observed in the erection of retail store buildings.

6. Nearly every city has its electrical, elevator, plumbing, wiring, piping, ice vending, and sewer codes which control the retail store's supply of electricity, power, gas, water, refrigeration, ice, and sewer connections.

7. Practically every city of size has its traffic codes which control the transportation and delivery of commodities to and from retail stores, and its codes which restrict the use of streets and alleys.

8. The use of space under sidewalks for vaults, the putting up of awnings and signs, and the display of goods on sidewalks are usually governed in most cities by municipal codes for minor highway privileges.

9. Many cities have codes governing various forms of outdoor advertising.

10. Some cities have ordinances to control the direct solicitation of business within the city.

11. All cities have taxing power and, in a sense, this power in itself is a form of municipal control over retail businesses which are subject to taxes but, aside from this taxing

power, all of the other powers of municipal control over retail trade are forms of police power.

12. The disposal of waste, such as crates, boxes, ashes, cartons, and garbage, from retail stores is controlled by municipal codes governing waste disposal.

13. The storage and warehousing of goods by retail stores is frequently controlled by municipal ordinances governing storage and warehousing, but there are also federal and state laws in this field.

14. A very few cities have ordinances, typically authorized by state law, by which so-called "closing out" sales are controlled. Under such laws, the city takes an inventory of the stock of goods when the "closing out" sale is announced, and the merchant is not permitted to replenish the stock during the sale.

15. A great many cities have special ordinances and codes governing municipal markets, where producers and consumers are brought together for the purpose of eliminating some of the costs of marketing.

16. A few cities have codes to control hours and times of opening and closing of stores.

17. Some cities have ordinances designed to protect the public against fraud and misrepresentation. These ordinances are in line with state laws.

18. All cities have ordinances designed to prevent crimes and misdemeanors, and these are in force at all times and in all places, including retail stores.

19. A great many cities have special ordinances and codes for the protection of employees of retail stores, specifying forms of health protection and protection from accidents.

20. Some cities have bureaus or departments of information which are organized to help their citizens control living costs and enable them to buy the necessities of life at advantageous prices.

21. A few cities have, in the past, exerted some control over retail prices by the device of municipal competition.

The accompanying Table III gives an analysis of municipal control of retail distribution by ordinances enacted to control elemental activities of retailing. In this tabulation are shown the results

TABLE III
ANALYSIS OF MUNICIPAL CONTROL OF RETAIL DISTRIBUTION BY SPECIFIC ORDINANCES ENACTED
TO CONTROL ELEMENTAL ACTIVITIES OF RETAILING

Note: The word "yes" after activity denotes the city has a definite ordinance controlling the same.

	New York N. Y.	Chicago Ill.	Philadelphia Pa.	Los Angeles Calif.	Baltimore Md.	San Francisco Calif.	Milwaukee Wis.	Washington D. C.	Newark N. J.	Jersey City N. J.	Portland Ore.	Richmond Va.	Trenton N. J.	Wilmington Del.
Licensing	Yes ¹	Yes ²	Yes	Yes	Yes	Yes ⁴	Yes	Yes	Yes ³	Yes	Yes ⁷	Yes	Yes	x ¹¹
Measuring and weighing	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes ³	Yes	Yes	Yes	Yes	x ¹¹
Food regulation and inspection	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes ³	Yes	Yes	Yes	Yes	x ¹¹
Zoning and city planning	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes ⁵	Yes	Yes	Yes	Yes	x ¹¹
Building ordinances	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	x ¹¹
Special subsidiary building ordinances:														
Plumbing code	Yes	Yes	Yes	Yes	Yes	Yes	Yes ¹⁰	Yes	Yes ³	Yes	Yes	Yes	Yes	x ¹¹
Pipes	Yes	Yes	Yes	Yes ³	Yes	Yes	Yes	Yes	Yes ³	Yes	Yes	Yes	Yes	x ¹¹
Refrigeration	Yes	Yes	Yes	Yes ³	Yes	Yes	Yes	Yes	Yes ³	Yes	Yes	Yes	Yes	x ¹¹
Sprinkler systems	Yes	Yes	Yes	Yes ³	Yes	Yes	Yes	Yes	Yes ³	Yes	Yes	Yes	Yes	x ¹¹
Sewers and sewer connections	Yes	Yes	Yes	Yes ³	Yes	Yes	Yes	Yes	Yes ³	Yes	Yes	Yes	Yes	x ¹¹
Fire protection	Yes	Yes	Yes	Yes ³	Yes	Yes	Yes	Yes	Yes ³	Yes	Yes	Yes	Yes	x ¹¹
Water codes	Yes	Yes	Yes	Yes ³	Yes	Yes	Yes	Yes	Yes ³	Yes	Yes	Yes	Yes	x ¹¹
Electrical control	Yes	Yes	Yes	Yes ³	Yes	Yes	Yes	Yes	Yes ³	Yes	Yes	Yes	Yes	x ¹¹
Elevator and escalator code	Yes	Yes	Yes	Yes	Yes	Yes	Yes ¹⁰	Yes	Yes ³	Yes	Yes	Yes	Yes	x ¹¹
Traffic codes	Yes	Yes	Yes	Yes	Yes	Yes	Yes ¹⁰	Yes	Yes ³	Yes	Yes	Yes	Yes	x ¹¹
Driveways across sidewalks	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes ³	Yes	Yes	Yes	Yes	x ¹¹
Sub-sidewalk vaults	Yes	Yes	Yes	Yes ³	Yes	Yes	Yes	Yes	Yes ³	Yes	Yes	Yes	Yes	x ¹¹
Wires and poles	Yes	Yes	Yes	Yes ³	Yes	Yes	Yes	Yes	Yes ³	Yes	Yes	Yes	Yes	x ¹¹
Awnings	Yes	Yes	Yes	Yes ³	Yes	Yes	Yes ³	Yes	Yes ³	Yes	Yes	Yes	Yes	x ¹¹
Signs	Yes	Yes	Yes	Yes ³	Yes	Yes	Yes ³	Yes	Yes ³	Yes	Yes	Yes	Yes	x ¹¹
Display of goods on sidewalks	Yes	Yes	Yes	Yes ³	Yes	Yes	Yes ³	Yes	Yes ³	Yes	Yes	Yes	Yes	x ¹¹
Billboards	Yes	Yes	Yes	Yes ³	Yes	Yes	Yes ³	Yes	Yes ³	Yes	Yes	Yes	Yes	x ¹¹
Bill posting	Yes	Yes	Yes	Yes ³	Yes	Yes	Yes ³	Yes	Yes ³	Yes	Yes	Yes	Yes	x ¹¹
Circulars, distributing	Yes	Yes	Yes	Yes ³	Yes	Yes	Yes ³	Yes	Yes ³	Yes	Yes	Yes	Yes	x ¹¹
Samples	Yes	Yes	Yes	Yes ³	Yes	Yes	Yes ³	Yes	Yes ³	Yes	Yes	Yes	Yes	x ¹¹
Distribution of newspapers	Yes	Yes	Yes	Yes ³	Yes	Yes	Yes ³	Yes	Yes ³	Yes	Yes	Yes	Yes	x ¹¹
Trading stamps	Yes	Yes	Yes	Yes ³	Yes	Yes	Yes ³	Yes	Yes ³	Yes	Yes	Yes	Yes	x ¹¹
Tending by machines	Yes	Yes	Yes	Yes ³	Yes	Yes	Yes ³	Yes	Yes ³	Yes	Yes	Yes	Yes	x ¹¹
Personal solicitation of business	Yes	Yes	Yes	Yes ³	Yes	Yes	Yes ³	Yes	Yes ³	Yes	Yes	Yes	Yes	x ¹¹
Waste disposal	Yes	Yes	Yes	Yes ³	Yes	Yes	Yes ³	Yes	Yes ³	Yes	Yes	Yes	Yes	x ¹¹
Garbage removal code	Yes	Yes	Yes	Yes ³	Yes	Yes	Yes ³	Yes	Yes ³	Yes	Yes	Yes	Yes	x ¹¹
Storage and warehousing	Yes	Yes	Yes	Yes ³	Yes	Yes	Yes ³	Yes	Yes ³	Yes	Yes	Yes	Yes	x ¹¹
Hours and times of opening and closing	Yes	Yes	Yes	Yes ³	Yes	Yes	Yes ³	Yes	Yes ³	Yes	Yes	Yes	Yes	x ¹¹
Employee protection	Yes	Yes	Yes	Yes ³	Yes	Yes	Yes ³	Yes	Yes ³	Yes	Yes	Yes	Yes	x ¹¹
Bridges and passage ways	Yes	Yes	Yes	Yes ³	Yes	Yes	Yes ³	Yes	Yes ³	Yes	Yes	Yes	Yes	x ¹¹
Crying wares on street	Yes	Yes	Yes	Yes ³	Yes	Yes	Yes ³	Yes	Yes ³	Yes	Yes	Yes	Yes	x ¹¹
"Pulling in"	Yes	Yes	Yes	Yes ³	Yes	Yes	Yes ³	Yes	Yes ³	Yes	Yes	Yes	Yes	x ¹¹

¹In New York those businesses and occupations selected to be licensed are so selected primarily for police control purposes.

²Partial list. Licenses are required in accordance with charter powers.

³Ordinances covered in general building code.

⁴In San Francisco fixed places of business in general do not have to have licenses. Those requiring police supervision must have licenses.

⁵Powers of zoning delegated to zoning commission.

⁶Prohibited.

⁷General merchandising license of \$6.00 per year.

⁸Regulation under fire code.

⁹Licensed.

¹⁰Administration conducted by civil service appointees.

¹¹All state control.

of a preliminary study of ordinances of fourteen American cities.

It will be noted that nearly all of these cities have ordinances to regulate licensing, measuring and weighing, zoning, and city planning. On the other hand, there are some activities covered by only a few of the fourteen cities. Such activities are crying wares on the street, distributing samples, and "pulling in." Trading stamps are prohibited in Washington, D. C., but in practically all the states, cities have no power to regulate trading stamps. The display of goods on sidewalks is prohibited in only a very few American cities, but in most cities is subject to limiting regulations. Only a few cities have ordinances for the purpose of regulating hours and times of

opening and closing of stores, largely for the reason that there is considerable doubt as to the constitutional right of municipal corporations to enforce such ordinances.

This tabulation is far from perfect, and in many cases where it would appear that a particular city has no ordinance to regulate a given activity the activity might be regulated in other ways—by state law or by discretionary powers exercised by municipal officials, or by local customs. For example, Washington, D. C., has an ordinance regulating the distribution of newspapers, but this should not be taken to mean that the distribution of newspapers in the other cities in the tabulation is done in a disorderly or an unregulated manner.

CHAPTER THREE

MEASURING THE EXTENT OF MUNICIPAL CONTROL OF RETAIL TRADE IN TERMS OF SPECIAL MUNICIPAL ORDINANCES ENACTED FOR INDIVIDUAL TYPES OF BUSINESS

A GREAT many American cities have enacted special ordinances intended to govern and regulate individual types of business, as distinguished from general ordinances enacted to govern some particular elemental activity underlying all forms of retail business.

To indicate the range of the various types of retail business for which special municipal ordinances have typically been enacted in leading cities, the figures of the United States Census of Retail Distribution of 1929, published in 1933, are shown in Table IV, analyzed by particular types of business. They are then re-classified in a different way from that followed in the census report, so that most of those types of business, which are typically subject to special municipal ordinances, can be separately indicated. The percentage of total national retail sales for each of these businesses typi-

cally subject to special municipal ordinances is shown in the extreme right column. By adding these percentages, which constitute a logical weighting on the basis of sales, it is seen that the total percentage of national retail sales of those types of retail business typically subject to these special municipal ordinances, is 48.41 per cent.

This, however, is only an approximate figure in view of the fact that the phrase "typically subject to special municipal ordinances" does not mean that all cities have such ordinances. In some types of business only a minority of cities have them. The figure of 48.41 is, therefore, a maximum. On the basis of retail sales, and in view of the fact that many cities do not have such ordinances, the actual maximum for the larger cities of the United States is very likely less than 25 per cent.

TABLE IV

RETAIL DISTRIBUTION IN THE UNITED STATES, BY KINDS OF BUSINESS

(Adapted from figures in the United States Census of Distribution for the Year 1929;* published in 1933. Prepared under the supervision of Robert J. McFall and John Guernsey.)

KIND OF BUSINESS	Number of stores	Net Sales 1929	Per- cent of total sales	Businesses typically subject to special municipal ordinances	Per- cent of total sales
United States Total	1,543,158	\$49,114,653,269	100.00		48.41
FOOD GROUP	481,891	\$10,837,421,585	22.07		
Candy and confectionary stores	63,265	571,549,374	1.16	yes	1.16
Milk dealers	3,990	560,995,747	1.14	yes	1.14
Dairy products stores (including ice cream)	4,488	165,965,016	.34	yes	.34
Egg and poultry dealers	3,258	70,858,063	.14	yes	.14
Delicatessen stores	11,166	194,820,089	.40	yes	.40
Fruit stores and vegetable markets	22,904	308,379,359	.63	yes	.63
Grocery stores (without meats)	191,876	3,449,129,144	7.02	yes	7.02
Combination stores (groceries with meats)	115,549	3,903,662,067	7.95	yes	7.95
Meat markets (including sea foods)	49,865	1,336,958,023	2.72	yes	2.72
Retail bakery goods stores and caterers	12,013	201,092,782	.42	yes	.42
Other food stores	3,517	74,011,921	.15	yes	.15
RESTAURANTS AND EATING PLACES	134,293	2,124,890,455	4.33		
Cafeterias	3,124	272,738,813	.56	yes	.56
Lunch rooms	57,612	541,701,515	1.10	yes	1.10
Restaurants with table service	36,214	988,472,912	2.01	yes	2.01
Other eating places, including box lunches, soft drink stands, lunch counters, refreshment stands ..	37,343	321,997,215	.66	yes	.66
GENERAL STORES—groceries with apparel, with dry goods and with general mdse.	104,089	2,570,744,006	5.23		
GENERAL MERCHANDISE GROUP	54,636	6,444,100,907	13.12		
Department stores:					
With food departments	460	939,411,294	1.91	yes (food)	
Without food departments	3,730	2,963,662,603	6.04		
Mail order houses—general merchandise	31	447,023,641	.91		
Dry goods stores	25,450	663,207,848	1.35		
General merchandise stores	12,855	526,648,026	1.07		
Variety, 5-and-10, and to-a-dollar stores	12,110	904,147,495	1.84		
AUTOMOTIVE GROUP	257,685	9,615,810,098	19.58		
Automobile salesrooms	40,797	6,153,216,567	12.53		
Used-car dealers	3,097	140,932,126	.29	yes	.29
Automobile dealers with farm implements	1,407	113,363,249	.23		
Accessories, tires and batteries	22,313	599,295,161	1.22		
Filling stations	121,513	1,787,423,097	3.64	yes	3.64
Motor cycles, bicycles and supplies	1,432	20,244,450	.05		
Body, fender and paint shops	3,379	46,106,105	.09		
Garages (repairs, gasoline, oil, accessories)	60,627	693,063,270	1.41	yes	1.41
Parking stations, parking garages and lots	2,059	39,261,738	.08	yes	.08
Radiator shops (including repairs)	728	6,569,523	.01		
Aircraft and accessories	114	5,593,699	.01		
Boats (motor boats, yachts, canoes)	219	10,741,113	.02		
APPAREL GROUP	114,296	4,240,892,577	8.63		
Men's and boys' clothing and furnishings	28,197	1,192,722,773	2.43		
Family stores (men's, women's and children's clothing)	10,551	552,353,340	1.12		
Women's ready-to-wear specialty stores	18,253	1,087,600,723	2.22		
Women's accessories stores (blouse shops, millinery stores, corset and lingerie shops, fur shops, hosiery shops, etc.)	19,971	392,642,191	.79		
Other apparel stores	13,065	208,744,561	.42		
Shoe stores	24,259	806,828,989	1.65		

*The 1929 table is used in preference to the 1933 table in this study because it is broken down into 167 kind-of-business groups, instead of 52 groups as contained in the 1933 table; thus making it possible to show in greater numbers the types of businesses subject to special municipal ordinances.

TABLE IV (Continued)

RETAIL DISTRIBUTION IN THE UNITED STATES, BY KINDS OF BUSINESS

(Adapted from figures in the United States Census of Distribution for the Year 1929;* published in 1933. Prepared under the supervision of Robert J. McFall and John Guernsey.)

KIND OF BUSINESS	Number of stores	Net Sales 1929	Per- cent of total sales	Businesses typically subject to special municipal ordinances	Per- cent of total sales
United States Total	1,543,158	\$49,114,653,269	100.00		48.41
FURNITURE AND HOUSEHOLD GROUP	58,941	2,754,720,507	5.61		
Furniture stores	25,153	1,509,814,999	3.07		
Floor coverings, drapery, curtain and uphol- stery stores	2,476	92,163,468	.19		
Household appliances stores	8,931	379,703,970	.77		
Other home furnishings and appliances stores	6,344	211,266,061	.43		
Radio and music stores	16,037	561,772,009	1.15	yes	1.15
LUMBER AND BUILDING GROUP	52,814	2,621,063,720	5.34		
Lumber, building materials, roofing, brick, stone, cement, etc.	26,377	1,981,283,657	4.03	yes	4.03
Electrical shops (without radio)	4,858	110,131,328	.23		
Heating and plumbing shops	12,709	334,276,830	.68		
Glass and mirror shops	588	9,552,083	.02		
Paint and glass stores	8,282	185,819,822	.38	yes	.38
OTHER RETAIL STORES	269,448	7,756,941,273	15.79		
Hardware stores	25,330	706,052,831	1.44	yes	1.44
Hardware and farm implement stores	12,242	518,507,791	1.05		
Farmers' supplies:					
Feed stores (flour, feed, grain, fertilizer, hay, etc.)	9,953	480,305,303	.98	yes	.98
Coal and feed stores	4,093	287,706,575	.59	yes	.59
Feed stores with groceries	7,127	205,235,703	.42	yes	.42
Other farmers' supplies including harness shops, etc.	5,961	145,916,448	.30		
Book stores	2,809	117,020,599	.24		
Cigar stores including stores with fountains	33,248	410,063,928	.83	yes	.83
Coal and wood yards	15,444	929,829,335	1.89	yes	1.89
Ice dealers	3,674	83,540,071	.17	yes	.17
Drug stores	58,258	1,690,398,682	3.44	yes	3.44
Florists	9,328	176,200,880	.36	yes	.36
Gifts, novelties and toys, and cameras	6,516	101,855,970	.21		
Jewelry stores	19,998	536,280,697	1.09		
Luggage and leather goods stores	1,367	40,311,962	.08		
Music stores (without radio)	2,232	54,742,210	.11		
News dealers	10,285	149,865,644	.31	yes	.31
Office, school and store supply, furniture and equipment dealers	2,512	168,118,324	.34		
Office and store mechanical appliances	1,284	112,756,150	.23		
Typewriter dealers	878	43,150,300	.09		
Opticians and optometrists	3,001	49,999,878	.10		
Sporting goods stores (including athletic and playground equipment)	1,930	65,464,137	.13		
Scientific and medical instrument and supply dealers (retail)	574	31,165,821	.06		
Stationers and printers	2,871	93,288,072	.19		
Monument and tombstone works	2,564	48,652,993	.10		
Miscellaneous classifications	25,969	510,510,969	1.04		
SECOND HAND STORES	15,065	148,068,141	.30	yes	.30
Tires, accessories and parts (second hand)	2,820	25,843,352	.05	yes	.05
Building material and hardware (second hand)	429	9,286,140	.02	yes	.02
Pawn shops sales	1,509	35,536,653	.07	yes	.07
Furniture stores (second hand)	5,643	37,748,870	.07	yes	.07
Clothing and shoe stores (second hand)	2,606	12,041,816	.02	yes	.02
Other second hand stores	2,058	27,611,310	.07	yes	.07

*The 1929 table is used in preference to the 1933 table in this study because it is broken down into 167 kind-of-business groups, instead of 52 groups as contained in the 1933 table; thus making it possible to show in greater numbers the types of businesses subject to special municipal ordinances.

RETAIL BUSINESSES NOT TYPICALLY SUBJECT TO SPECIAL MUNICIPAL ORDINANCES

Before proceeding further in the analysis of retail businesses typically subject to municipal ordinances, some attention should be given to those retail businesses in the United States census list which are typically not subject to specially-enacted municipal ordinances. These are:

Department stores (without food and drugs)
 Mail order houses
 Dry goods stores
 General merchandise stores
 Variety, 5-and-10 and to-a-dollar stores (without food and drugs)
 Automobile accessories, tires and batteries
 Men's and boys' clothing
 Family stores
 Women's accessories stores
 Millinery stores
 Corset and lingerie shops
 Fur shops (retail)
 Hosiery shops (women's)
 Other apparel stores
 Shoe stores
 Furniture stores
 Floor coverings, draperies, and curtains
 Upholstery stores
 Other home furnishings and appliances stores
 Harness shops
 Bookstores
 Gifts, novelties, and toys
 Jewelry stores
 Luggage and leather goods stores
 Music and piano stores (without radio)
 Office, school, and store supply, furniture and equipment dealers
 Business machines dealers
 Typewriter dealers
 Opticians and optometrists
 Sporting goods stores, athletic goods and playground equipment (excluding sales of ammunition and weapons)
 Scientific and medical instrument and supply dealers
 Monument and tombstone dealers

In regard to the retail businesses listed above, it should be noted that, typically, they do not involve the following:

1. The sale of articles or materials which are dangerous to store employees or to the

public, or articles or materials which are connected with fire hazards, such as inflammable liquids, explosives, ammunition, weapons, etc.;

2. The sale of articles or materials which need police supervision in order to protect the public health;

3. The sale of articles or materials which are likely to cause community disorders or nuisances;

4. Places frequented by criminals or underworld characters;

5. The sale of habit-forming drugs or narcotics;

6. The sale of goods which are likely to have been stolen;

7. House-to-house selling;

8. Firms that frequently violate laws and ordinances relating to weights and measures.

In other words, these retail businesses are typically not subject to special municipal ordinances in the United States because cities ordinarily find it unnecessary to use their police power to control them in the interest of the public health, welfare, safety, and comfort.

This does not mean, however, that this group of businesses is free from municipal control. All of them are subject to general municipal ordinances to control retailing in general, such as zoning, weights and measures, building, wiring, traffic, and many other types of general ordinances already discussed in the previous chapter.

An interesting feature of the list of retail businesses in the United States census is that of general stores. These are seldom found in cities, but usually in small towns and rural districts. Practically all general stores sell groceries, but, whereas in cities, police control is usually exercised over all food sales, such municipal control is not often found in small towns. This will explain why general stores are not found in either of the two lists just discussed. Even though they are over 100,000 in number and make 5 per cent of the retail sales in the United States, they do not constitute a city problem.

The check-list in the first column of

Table V shows retail businesses ordinarily subject to special municipal ordinances. This list was developed by selecting from the 1929 United States Census of Retail Distribution those particular businesses discussed above, and adding to them several other types of retailing not separately mentioned in the census analysis. This check-list was used in visiting various cities during 1933, 1934, and 1935, for the purpose of studying the various ordinances of each city enacted for the regulation of retail trade.

It should be stressed at this point that all of the ordinances discussed in this chapter are special ordinances for the regulation of various types of retail stores, and include much more than licensing regulations. Mere licensing regulations have already been covered in the previous chapter. All of the ordinances studied in the present chapter are of a special character and although, in most cases, licenses are required, these ordinances include other special regulatory features in line with the exercise

of police power. The types of retail stores typically subject to special ordinance regulations are generally included because these stores do or may contain some of the dangerous or anti-social elements listed in the eight points on page 740.

In other words, these retail businesses are typically subject to municipal ordinances in American cities because these cities ordinarily find it necessary to use their police power to control them in the interest of the health, welfare, safety, and comfort of the people.⁶

Table V is an analysis of fourteen American cities which were visited in the course of the present study and whose officials coöperated in furnishing materials and information regarding these special municipal ordinances for particular retail businesses.

This table is arranged by vertical columns for each city. Under the column heading for each city is indicated the existence of special ordinances for each of the types of businesses shown. This analysis is as of 1933-1934.

CHAPTER FOUR

MUNICIPAL ORDINANCES RECOMMENDED FOR GENERAL ADOPTION

AFTER the present study had progressed several months, it became quite evident that a considerable number of municipal ordinances for the control of retail trade, typically used by American cities, are really necessary and should be enacted in every large city. It will be the purpose of the present chapter to set forth a list of such ordinances which,

after a considerable number of interviews with city officials, municipal experts, chambers of commerce, retail trade boards, and local merchants' associations, appears to meet with wide approval.⁷

This list includes ordinances from the two general groups discussed in Chap-

⁶The laws of Congress, authorizing police regulation in the District of Columbia, in listing types of business to be regulated, place first on their list pawnshops, junk yards, and second-hand clothing businesses. (These are businesses which are apt to deal in stolen goods.) Next in the list is the regulation of inflammable substances. Third on the District of Columbia list are licensed vendors on streets and public places.—See Police Regulations, D. C., November 17, 1933, page 1.

⁷One of the first writers to advocate that a municipal code book should have a special section of ordinances devoted entirely to the regulation of business, was E. D. Greenman, Assistant Director of the New York State Bureau of Municipal Information. See pp. 26 and 36 of his book, *Codification of Ordinances*, Chicago, Public Administration Service. The ordinances which he groups in his special chapter are as follows: licensing and control, general businesses, advertising, vehicles for hire, trades, merchants, and manufacturers.

TABLE V

ANALYSIS OF SPECIAL MUNICIPAL ORDINANCES FOR PARTICULAR TYPES OF RETAIL BUSINESSES IN SELECTED AMERICAN CITIES

Note: The word "yes" denotes that the particular city has a special ordinance for the particular kind of business indicated.

	New York N. Y.	Chicago Ill.	Philadelphia Pa.	Los Angeles Calif.	Baltimore Md.	San Francisco Calif.	Milwaukee Wis.	Washington D. C.	Newark N. J.	Jersey City N. J.	Portland Ore.	Richmond Va.	Trenton N. J.	Wilmington Del.
FOOD RETAILERS	1	2	3	4		2	3	5						
Candy and confectionery in- cluding stores with fountains		Yes		Yes ⁷	Yes						Yes	Yes		
Milk and dairy products				Yes ⁷						Yes	Yes		Yes	
Egg and poultry dealers				Yes ⁷					Yes		Yes			
Fruits and vegetable stores		Yes		Yes ⁷	Yes				Yes		Yes		Yes	
Meat markets and sea foods									Yes					
Groceries, combination gro- ceries, and delicatessen stores		Yes		Yes ⁷					Yes		Yes			
Retail bakeries		Yes		Yes ⁷					Yes		Yes			
Other retail food stores		Yes		Yes ⁷					Yes		Yes			
Bottled waters and beverages				Yes ⁷										
Restaurants, lunch rooms and other eating places		Yes		Yes ⁷			Yes	Yes	Yes	Yes	Yes			
OTHER RETAILERS SELLING														
NEW GOODS														
Automobile dealers (new cars)		Yes						g			Yes			Yes
Gasoline filling stations, garages and other establishments														
selling gasoline and motor oil	Yes	Yes		Yes		Yes		Yes		Yes	Yes	Yes		Yes
Lumber yards and building materials		Yes												
Paint stores	Yes	Yes									Yes			
Hardware stores		Yes									Yes			
Coal dealers		Yes												
Ice dealers	Yes				Yes									
Drug stores	Yes	Yes			Yes		Yes							
Florists														
Tobacco retail stores		Yes					Yes				Yes			Yes
News stands		Yes												
Farmers supply and feed stores		Yes												
SECOND-HAND STORES														
Used car dealers	Yes	Yes	Yes	Yes	Yes	Yes	Yes	g		Yes		Yes	Yes	
Furniture stores (sales)	Yes	Yes		Yes	Yes	Yes	Yes	Yes ^d	Yes	Yes		Yes	Yes	
Other second-hand stores								Yes						

ters II and III; namely, (1) ordinances to control particular business activities, and (2) ordinances specially enacted to control particular businesses. These ordinances are listed and discussed under the following headings:

I. ORDINANCES GOVERNING BUSINESS EXISTENCE

Practically every city in the United States has found it desirable to enact licensing ordinances by which the existence of retail business enterprises is regulated. While some cities regard this device as fundamentally a source of income, the fact should not be overlooked that licensing is more of a device of registration than of taxation and that this device, properly used, should give city officials control of all pertinent facts regarding the existence of retail business enterprises.

II. ORDINANCES GOVERNING LOCATION OF RETAIL STORES

In the early history of the United States practically nothing was done to control the location of retail stores, but during the last twenty years nearly every leading city has developed a system of city planning and zoning by which retail stores of all kinds must conform to zoning regulations. Whereas, fifty years ago attempts to regulate the location of retail stores would have been seriously resented and opposed, today it is a widely accepted principle that special areas of a city should be restricted as to types of buildings and businesses permitted within them. Furthermore, in every zoning ordinance or series of zoning ordinances, the restrictions on locations for various types of retail enterprises are of primary importance. Therefore, it is only natural that the zoning of retail stores should meet with widespread approval today.

III. ORDINANCES REGULATING THE USE OF PUBLIC PROPERTY

Ordinances regulating the use of public property are regarded as a necessity

in many cities, not only by city councils and city officials, but also by the merchants themselves. When such ordinances are enacted they are sponsored quite as frequently by merchant associations as they are by the city officials.

a. *Traffic Ordinances*

One of the most important reasons for the creation of municipalities is the need for an effective local application of the police power of the state. As said before in Chapter II, retail trade is essentially the application of motion to materials. Police power affects this movement in terms of control of the movement of commodities and customers over the city streets and sidewalks. Every American city has ordinances regulating the use of the city streets and sidewalks by retail trade in all its phases.

b. *Awnings, Signs, Poles and Wires, etc.*

It is obvious that there must be municipal regulations to govern and restrict retail stores in their occupancy of sidewalks and streets. In nearly every city, awnings, signs, poles, wires, etc., are strictly regulated so that all merchants shall be governed by the same rules, in the interest of the public convenience and safety.

c. *Display of Goods on Sidewalks*

In some cities, all display of goods on sidewalks is prohibited. In others, display of goods on sidewalks is permitted out to a certain distance, such as two or three feet. There are some merchants who, as a matter of principle, never display any of their goods on sidewalks, while others think that such display aids in making sales. Very clearly, this is a field of regulation in which the municipal government must act, and it is generally recognized all over the United States that there should be ordinances for this phase of business activity.

d. *Distribution of Samples*

Only a few cities have ordinances regulating the distribution of samples,

probably for the reason that very few retailers wish to go to the expense of giving them out, and for this reason the cost of the samples acts as a limiting factor.

e. *Distribution of Circulars*

There has been a great deal of controversy over the distribution of circulars. Jersey City has gone further than any other city in this respect, and has an ordinance which absolutely prohibits this activity. A copy of the Jersey City ordinance prohibiting circulars is shown in Appendix C. This ordinance went to the Supreme Court of New Jersey, passed all the tests for constitutionality, and has been copied in a number of other cities.

f. *Stands on Public Property*

Nearly every city has ordinances and regulations governing the use of public property for various kinds of shoe-shining stands, news-stands, lunch counters, ice cream wagons, and similar vending devices. Without such ordinances, certain street corners and intersections would be used by these enterprises to such an extent as to become a nuisance.

g. *Crying Wares on Streets*

A great many cities have found it desirable to enact ordinances in order to suppress the noise made by newsboys, itinerant rag merchants, junk dealers, and transient vendors.

h. *Radio Loudspeakers*

In many cities, radio loudspeakers, used for advertising purposes outside of stores, in the doorways or windows of stores, or on automobiles, have become a serious problem. This form of nuisance is subject to direct regulation by municipalities.

IV. ORDINANCES TO PROTECT HEALTH

a. *Food Regulations*

While in some states, such as Delaware, food regulations are all state laws, most cities have their own municipal ordinances for this purpose, to support

the state laws and to set up and enforce supplementary regulations.

b. *Milk Regulations*

The problem of milk regulation is a very important phase of food regulation. Nearly every city in the United States has ordinances in this field for the general protection of public health.

c. *Protection to Employees*

In a great many states, employees are protected by various kinds of state laws, but these are supplemented in some cities by special municipal ordinances which have been found very helpful. For example, Chicago has an ordinance which requires all retail stores to provide seats behind counters, so that the salesgirls will not have to stand on their feet during the entire day.

d. *Prohibition of Returning Goods Which Might Spread Disease*

In recent years there have been a great number of municipal ordinances enacted which prohibit the returning of goods which might spread disease. Such merchandise includes hats, hairbrushes, and intimate wearing apparel.

e. *Control of Waste Disposal*

One of the most costly items of municipal government is the removal of waste caused by retail stores. A great many cities have such ordinances which strictly regulate the manner in which stores may dispose of their crates, barrels, empty boxes, and other refuse material.

V. ORDINANCES TO PREVENT DECEPTION OF THE PUBLIC

a. *Transient Vendors Ordinances*

The transient vendor, or peddler, is a problem to many communities, and efforts have been made to control the situation by a fairly high license fee and other regulations.

b. *Weights and Measures Ordinances*

In some states, such as Minnesota, the state reserves all police power to regulate weights and measures, and delegates no

power to the municipal corporation. On the other hand, most of the states have their own municipal ordinances to regulate weights and measures, and these ordinances are of great importance in the carrying on of business.

c. *"Closing-Out" Sales Ordinances*

The cities of Milwaukee, New Orleans, and a number of others have special ordinances to govern so-called "closing-out" sales. In these cities, when a "fly-by-night" merchant opens up a store for a brief time and advertises a "closing-out" sale, it must be actually a closing-out sale. The city comes in, takes an inventory of all the goods, and the merchant is not allowed to replenish his inventory in any manner during the period of the sale. This is probably the only instance where government comes in and regulates the inventory of a store.

d. *Ordinances Governing Auctions and Auctioneers*

Auctions and auctioneers have shown themselves likely to become nuisances in nearly all cases where they operate a transient business.

A model ordinance, sponsored by the New York State Bureau of Municipal Information and recommended for passage by all cities in the state, has the following significant paragraph:

Section 9. (6) It shall be unlawful for any person to sell or offer or advertise for sale any goods, wares, or merchandise at auction falsely representing or pretending that such property is in whole or in part a bankrupt or insolvent stock, or damaged goods, or goods saved from fire, or make any false statement as to the purchase, history, or character of such property.

This ordinance also prohibits the giving away of articles of jewelry to customers as a device to increase sales. It also specifies that whenever diamonds, watches, and jewelry are sold, there shall be securely attached to each of such articles a tag or label upon which there

shall be plainly written or printed in English a true and correct statement of the kind and quality of the metal of which such article is made or composed, and the percentage or carat or purity of such metals or precious stones.

In all of these special ordinances governing auctions and auctioneers, it is the usual procedure to fix rather high license fees. The primary purpose of these ordinances is not to fix fees or to find sources of municipal income. It is rather to protect the citizens of the community from deception.

e. *Used Car Dealers Ordinances*

The business of dealing in used cars has often been characterized by more or less unscrupulous transactions, although in recent years the leaders of this business have raised it to a higher plane of ethics. For these reasons, special ordinances governing the business, sponsored by the more reputable used car dealers themselves, are often regarded as a necessity. In some states, however, city governments do not attempt to enact ordinances in this field but leave it entirely to state legislative enactments.

THE LOS ANGELES ORDINANCE

The ordinance (No. 69,620) regulating dealings in used motor vehicles which has been effective in Los Angeles since December 16, 1932, closes with this significant passage:

WHEREAS, under the provisions of Ordinance No. 67,353.... a great many frauds are being practiced upon the public which said ordinance does not prevent; and

WHEREAS, the provisions of this ordinance are such that frauds which are not prevented under the provisions of Ordinance No. 67,353 will be prevented;

NOW, THEREFORE, this ordinance is urgently required for the immediate preservation of the public peace, health, and safety; and the city clerk shall certify to its passage by a unanimous vote....

Under this ordinance, in order to engage in the business of dealing in used

motor vehicles, a permit is required from the police commissioners. The fee is \$200.00, which may be renewed annually for \$2.00.

The evils which the present Los Angeles ordinance is designed to prevent are the following:

1. *Failure to deliver title.* The ordinance requires a bond for \$2500.00 for the protection of persons paying for cars in good faith.

2. *Lack of responsibility.* The ordinance requires that the business shall be carried on at a fixed place, that the applicant shall sign the application in his own name, that if a corporation or partnership, the addresses of all the officers of the corporation or all the partners shall be given in the application.

3. *Unreliable dealers.* Upon receipt of an application, the board of police commissioners investigates the record of the applicant and checks up on the statements in the application.

4. *Uncertainty as to who dealers are.* Only one person, firm, or corporation may conduct a used automobile dealer's business at any particular established place of business, unless any other person, firm, or corporation desiring to conduct a business at the same location, has also received a permit from the board of police commissioners.

5. *Lack of records.* Dealers are required to keep complete records of all transactions for the information of the police. Also, all transactions must be reported to the police within forty-eight hours of the time of transaction, on blanks furnished by the chief of police.

6. *Illegal and fraudulent reposessions.* Within forty-eight hours after a repossession, a dealer must give full information concerning it to the police on special blanks furnished by the chief of police.

7. *Difficulty of locating dealers.* Every dealer in used cars must display a sign in letters not less than six inches in height on the front building line of the premises, legible for fifty feet, giving name and, in letters not less than two inches in height, the permit number.

8. *Sales from fly-by-night locations.* No

dealer can sell cars from any place other than the place named in his permit.

9. *False advertisements.* Dealers are not allowed to advertise in local papers that they have cars for sale unless they actually have them for sale on their premises.

VI. ORDINANCES TO GOVERN BUSINESSES WHICH MAY DEAL IN STOLEN GOODS

In every city there are a number of businesses which, because of the likelihood that they may deal in stolen goods, are governed by special ordinances. These businesses are, typically, used car dealers, second-hand dealers, pawnbrokers, and junk dealers.

a. *Used Car Dealers*

Used car dealers have already been mentioned under the previous heading, but they must also be included in this class, for a different purpose.

b. *Second-Hand Dealers*

c. *Pawnbrokers*

It may seem out of place that pawnbrokers be listed here, but, for all practical purposes, a pawnbroker is a second-hand dealer. The customer, in fact, sells his pledge to the pawnbroker, reserving the right to buy it back later at a higher price, the whole transaction being legally regarded as a loan of money at interest, secured by the pledged goods.

d. *Junk Dealers*

Historically, the existence of junk yards was a very powerful factor in the development of zoning ordinances because, without such ordinances, a community would have great difficulty in controlling the locations of this type of business. For this reason, and also because of the opportunities which junk dealers have of buying and selling stolen goods, nearly all American cities have special ordinances enacted to govern this business.

VII. ORDINANCES TO REDUCE FIRE HAZARDS

In the exercise of the police power delegated to municipal corporations by

the state, practically every American city has special ordinances, as follows:

- a. *Fire Regulations*
- b. *Ordinances to Govern Sales of Fireworks*
- c. *Ordinances to Govern Sales of Flammable Liquids and Materials*

No particular comment is needed on these three types of ordinances. In some cities, fireworks are completely prohibited; in others, they are permitted to be sold under very strict police supervision.

All American cities have special ordinances governing the sales of flammable or easily combustible liquids and materials, such as linseed oil, turpentine, gasoline, nitroglycerin, and many others.

NEW YORK GROUP OF SPECIAL ORDINANCES

Before closing this chapter, it seems appropriate to take up a typical American city, and to enumerate the ordinances found in its code book for the special regulation of particular types of retail businesses.

Unique among American cities as regards special ordinances for particular retail businesses, is the city of New York. In that city's code, all such ordinances fall into several groups, as follows:

1. Ordinances which are intended to regulate sales of dangerous and hazardous articles and materials;
2. Ordinances in the sanitary code, intended to protect the public health;
3. Ordinances relating to retail businesses which require special municipal policing, such as second-hand dealers;
4. Ordinances regulating house-to-house canvassing;
5. Ordinances regulating retail businesses frequently violating short-weight ordinances.

All the New York City ordinances which govern retailing fall strictly into the category of policing, that is, protecting the health, comfort, and safety of the public.

In New York City licenses are not used chiefly as a source of municipal revenue, but rather for the purpose of policing in types of business where control of business existence by licensing is necessary.

THEORIES OF MUNICIPAL LICENSING OF RETAIL TRADE

In the progress of the present study, it became clear that as regards municipal licensing of retail stores, there are several general theories involved. Some of these will now be discussed.

Licensing as Business Registration

The simplest theory of licensing was found in operation in the city of Trenton, New Jersey, in 1930 and earlier. Mr. Edward W. Lee, comptroller of the city of Trenton, has explained this as follows. In that city, in 1930, the theory of licensing was that every retail business should be registered annually at the city hall, so that each year the city officials should have a complete record of every enterprise engaged in retail business during the year. For this registration only a nominal license fee was charged, supposed to be sufficient, in the aggregate, merely to cover the overhead costs of such registration. The city officials of Trenton apparently believed that license fees and taxes were two separate and distinct devices, and that all taxation should be levied and collected strictly as such, and not in the supplementary form of heavy license fees. Needless to say, the American cities which follow this theory of taxation are overwhelmingly in the minority. (See receipts from business licenses in the accompanying Table VI.)

Licensing As Taxation

Another theory of licensing is found in operation in Atlantic City, New Jersey. In this city, like Trenton, it is believed by city officials that every retail business should be registered, but the theory of the license fee is very much different. In Atlantic City every regis-

TABLE VI
COMPARISON OF RECEIPTS FROM BUSINESS LICENSES IN TRENTON AND
ATLANTIC CITY IN 1930 AND 1933

	Population		Retail Sales		Receipts from		Business Licenses 1933
	1930	1933	1929	Per capita	1930	Per capita	
Trenton	123,356	124,100	\$75,061,000	\$608.5	\$143,252	\$1.16	\$430,973
Atlantic City	66,198	68,800	70,495,000	1064.9	473,945	7.16	Figures not available

trant is charged a substantial license fee or "license tax" which is adjusted to his earnings and ability to pay. The difference between Atlantic City and Trenton in 1930 can be seen in the accompanying Table VI.⁸

The "Orthodox" Theory of Municipal Licensing

A third theory of licensing, which may be called the "orthodox" theory, is the theory which is most generally used in the United States, and is the fundamental theory on which a great many cities, such as New York City, San Francisco, Newark, New Jersey, and many others proceed. Under this theory, only those businesses which must be policed, such as the list described for New York City, are required to be registered. Some of the license fees under such a system are quite large, such as, for example, licenses for junk dealers, used car dealers and pawnbrokers, because, under this theory, it is apparently believed that they should pay for the additional policing required.

In studying these different theories of licensing, it seems that the most logical plan is that which registers all types of retail business, yet levies but a nominal license fee, except in cases of types of businesses that require extra policing, which may be assessed heavier license fees.

Other Theories of Licensing

In addition to these three basic theories of municipal licensing, there are

some other theories. Particular mention should be made of the Alabama system of licensing. In Alabama the state does not fully delegate the power of licensing and taxation to the cities, but reserves most of this power to itself, and, strange to say, proceeds on the theory of charging as high a fee as will be tolerated in the case of nearly every type of business. However, after these license fees are collected, they are then apportioned back to the cities on various bases of allocation. Some "license taxes" are allocated on a fifty-fifty basis, in other cases the state retains one-third, and in still other cases the state retains the larger portion.⁹

The following table gives figures for the receipts of business license taxes in three cities in Alabama, in 1930:

TABLE VII

City	Receipts of License Taxes	Per Capita
Birmingham	\$1,087,026	\$4.19
Mobile	318,307	4.67
Montgomery	306,322	4.64

The total receipts from business licenses in 1930 in the 310 largest cities in the United States were \$78,731,064, which was only \$1.66 per capita.

The per capita figures in these three cities of the state of Alabama are practically three times as great as the national per capita figures for receipts from business licenses in the 310 largest cities.

CHAPTER FIVE

DEVICES AND MECHANISMS OF MUNICIPAL CONTROL

IN PREVIOUS chapters which discuss the different fields in which American municipal governments exercise control over retail trade in its various phases,

such as building codes, sanitary codes, pure food codes, etc., some attention has been given, from time to time, to

⁸See American Municipal Association, *License Taxes as a Source of Municipal Revenue*, Chicago: Report No. 28, April 1933.

⁹The method of levying and allocating business taxes in Alabama is described in *Federal and State Tax Systems*, published by the Tax Research Foundation.

various mechanisms and devices of control such as ordinances, licensing, inspections, fines, and other forms. In each field of control, some of these devices and mechanisms are used in order to make the control effective. In some of the fields of control, certain mechanisms may be used which are not used in other fields, but all of the various mechanisms and devices are used at various points in the entire scheme of municipal control of retail trade.

This chapter, therefore, will be devoted to a discussion of these various mechanisms and devices of control, in order that they may be studied in relation to each other.

TWO CLASSES OF MUNICIPAL POWERS

All of these mechanisms and devices shown below are used by city governments in the exercise of the powers delegated to them by the state, and it is generally recognized that all powers of municipal corporations fall into two basic groups, namely:

I. *Governmental Powers*

II. *Business-Administrative Powers*

With this basic division in mind, nearly all of these mechanisms and devices for municipal control of retail trade are found to be used in the exercise of governmental powers and, of these governmental powers, by far the most important is the police power.

In addition to the devices used in enforcing the police power, a considerable amount of control of retail trade is exercised by means of the device of municipal taxing power and by municipal competition, which may be called a business-administrative power. Finally, a municipal government can exercise some control over retail trade by municipal advisory services, set up to control living costs.¹⁰

¹⁰Limited space makes it impossible to discuss these municipal advisory services.

LEGISLATIVE MECHANISMS AND DEVICES

Among all the mechanisms and devices used in enforcing police power, the most fundamental is the legislative group. This is true because municipal ordinances, or their equivalents, must first be in existence before the mechanisms and devices other than legislative can be used.

Just as the federal government of the United States exercises its control by means of legislative devices, administrative devices, and judicial devices, so the municipal government, in miniature, follows a similar plan.

Municipal ordinances are ordinarily enacted by the city council, but they are not the only legislative devices that a city employs. Some cities differentiate between ordinances as such, and another type of enactment which they call local laws. New York City has a code of ordinances, and in addition, a set of what are called "local laws." In addition to ordinances, there are also the provisions of the city charter, which in reality rank higher than ordinances, and yet are legislative in character.

However, ordinances, local laws, and charter provisions are not all of the legislative devices used for the control of business. In every state there are mandatory powers and implied powers conferred upon cities by state law, which may not be enacted in municipal charters or municipal code books. Such powers constitute a group of legislative devices of considerable importance.

These devices, just discussed, are the chief legislative means used by American municipal governments in the control of retail trade. No further analysis of them is necessary at this point.

ADMINISTRATIVE METHODS

It is a commonplace of government that laws and ordinances never enforce themselves. No matter how strictly an ordinance is worded and no matter

how perfect it is from the point of view of constitutionality, without the administrative and judicial devices of government, all legislative enactments would be in vain.

Considerable space should be given to the subject of administrative methods, which might be defined as all those devices set up for the purpose of preventing violations of laws and ordinances, as distinguished from judicial devices, which are set up for the purpose of punishing such violations, and/or removing the violators from the community.

A discussion of administrative mechanisms and devices follows:

Licenses and Permits

A municipal license or permit is a right or privilege to carry on a business or to perform an act or a series of acts which, without such license or permit, would be illegal. It is issued by a municipal corporation acting as agent for the state and by virtue of police power delegated to it by the state.

The two terms *license* and *permit* are generally regarded as synonymous in many states, while in others there is some tendency to confine the term *license* to the privilege of carrying on a continuing business or occupation, and to use the term *permit* in connection with: (a) privileges granted to perform specific acts such as erecting a building or conducting a procession on the streets; (b) privileges granted for a continuing period of time which are not directly connected with business enterprises or professions, such as permits for tanks on roofs or vaults under alleys; and (c) specific privileges granted for a business enterprise or profession, involving physical changes which might affect public welfare, such as a permit to display goods on the sidewalk, a permit to sell deadly weapons, a permit to install elevators, or a permit to take water from the city water system.

Even though there is this general tend-

ency to regard *licenses* and *permits* as synonymous, yet there is a distinction between a privilege which brings a business into legal existence, which is usually called a *license*, and all these other forms of privileges not connected with bringing a business or a right to engage in a profession into existence, most of which are called *permits*. But it is clearly impossible to draw a sharp line of distinction between the two terms.

Licensing is the basic administrative device of municipal control over retail business, because it alone gives legal existence. Without this privilege granted by a municipality, a business cannot carry on. For this reason, the mere non-approval of a license acts as an administrative device in order to attain conformity with municipal ordinances before a license is granted.

The social purpose of a municipal license (or permit, if used in this sense) is to confer a right or privilege upon the licensee which does not exist without it. The social purpose of an ordinance authorizing such licenses or permits is to regulate and control the business enterprises, professions, and others granted such privileges, for the general good of the community and in harmony with public welfare. The power of a municipality to require and issue licenses and permits arises solely from its grant of police power delegated to it by the state.

Mention should be made here of the importance of the devices of revocation and suspension of licenses. Whereas the issuance of a license is largely a formality, the withdrawal of a license, either temporarily or permanently, is the real whip-hand of control in this field. Many violations of municipal ordinances are stopped at their very beginning by these devices.

Mention should also be made of the usefulness of registration plates and numbers in order to identify licensees in any cases where doubt might arise as to their

authorization to engage in business. The great majority of licenses are accompanied by such registration numbers and tickets or plates.

License Fees and Permit Fees

In connection with a license or permit granted by a municipal corporation, there is usually imposed and collected a fee sometimes called a *license tax* or *occupation tax*, although some states have ruled that a license fee is not a tax in the strict sense of the word. Furthermore, a license fee is quite distinct from an inspection fee which will be discussed later in the present chapter.

Municipal license fees, regardless of their inseparable connection with the strictly police function of licensing, actually constitute a portion of municipal revenue which is part of the very vital problem of keeping the city budget balanced and, for that reason, such fees tend to be considered by city officials as taxes for revenue. In cities where taxing power for revenue purposes has not been delegated to the municipality by the state, such fees are explained as an exercise of police power, but in municipalities which have been granted both police power and taxing power, they are explained on either one or both grounds. If a city, by its charter from the state, has been delegated both taxing power for purposes of city revenue, and police power for purposes of regulation of business, it has a double authorization to collect license fees.¹¹ However, it must be remembered, that in contemplation of

law, the right of a city to enact and enforce license ordinances and to impose and collect license fees is only a delegated power given it by the state, and that the state legislature has the right, by a later act, to divest a municipality of these powers delegated to it and to impose license taxes and resume the exercise of the power itself, or it may, by legislative enactment, limit or modify the municipality's power; and in any case the municipality is obligated to carry out the provisions of the state legislature because, as agent of the state, it must enforce its delegated police powers as required by the state.

Inspections

Inspection is one of the most effective devices for the control and regulation of retail trade under the police power. This is fundamentally a state function because of its vital importance to public welfare, but it has been recognized in most states as a proper subject for delegation to municipal corporations where necessary and convenient, and where the imposition of this police function upon the municipality will aid in promoting the general welfare.

An inspection is a checking up to see that standards of quality and quantity, specified by statute or ordinance, are being complied with. It is a careful and detailed examination of certain articles entering into commerce and trade, and of the successive processes used in their manufacture, for the purpose of declaring them fit or suitable for retail sale to the public, thereby protecting the community against fraud and imposition and promoting the public health, safety, and welfare.

In addition to protecting the public in the interest of public welfare, inspection laws and ordinances also have a further purpose and design which is the protection of manufacturers and retailers against unfounded and unfair claims and lawsuits by consumers.

¹¹Where a city is authorized to license all lawful kinds of businesses for regulative and revenue purposes, and the city council passes an ordinance forbidding auction sales except by duly licensed auctioneers, and fixes the license fee for auction sales of stocks of merchandise, dress goods, jewelry, etc., at twenty-five dollars a day, payable in advance, although such ordinance is unreasonable and therefore cannot be sustained under the city's power to "regulate" the business of auctioneers, it is nevertheless within the city's taxing power.—*Stull v. DeMattos*, 23 Wash. 71; 62 P 451; 51 LRA 892; *DIFF*, pp. 178-179, Vol. 37.

The commodities most commonly subject to state and municipal inspection are foods, drugs, coal and coke, fertilizers, flour, grain, hay, hides, liquors, lumber, meats, milk, naval stores, oil, gasoline, tea, tobacco. Many other items are also subject to inspection in certain states.

The desirability of the policing device of inspection is in evidence throughout the entire productive and marketing process from the original producer of raw materials through the various successive stages of manufacture and, finally, at the stage where commodities arrive on the shelves of retailers for their ultimate sale to individual purchasers. Inspection is especially necessary in connection with foods and drugs.

In most states the power of appointing inspectors is a power of the state legislature which may be delegated to a municipal corporation or to the mayors or other executive officers of cities, or to boards of health or other local boards.

If inspections were limited only to use by municipal corporations in their direct control of retail trade, this device could not reach its maximum effectiveness, for the most practicable way to insure high standards of quality in retail goods is to inspect all the important consecutive processes through which the goods pass, beginning with the original sources. Thus, milk must be inspected not only as it is delivered to homes, but also at the dairy farms. A municipality may usually obtain whatever inspectional coöperation is needed from its state government or other state governments, in order to insure standards of quality, even though the items are produced at considerable distances from the city.

Inspection Fees

In connection with inspections, a reasonable inspection fee may be, and usually is, imposed for the purpose of defraying the costs of inspection and, under such circumstances, such a fee is not legally construed as a tax.

Ratings

An effective device used by many cities for the purpose of complying with municipal regulations is that of ratings. Several types of retail establishments, such as meat markets, grocery stores, and soda fountains, are particularly adaptable for the use of rating sheets.¹² A series of merits and demerits or percentage grades may be calculated from a selected list of points, such as: soiled floor behind counter, soiled counter, dirty containers, poor dishwashing facilities, improper disposal of solid waste, improperly sterilized drinking vessels, exposed syrups, preserves, and whipped cream, lack of protection of foods from dust and flies, lack of proper refrigeration, soiled clothing worn by salespersons, soiled hands, carelessness of salespersons.

With an adequate number and the right type of inspectors, these devices of ratings are very valuable in making municipal regulations effective.

Required Reports

Another device of control is that of required reports. This device is effective in reducing some of the expense of inspections. Grocery stores, drug stores, delicatessens, and many other types of stores can be required to prepare and send in periodic reports as to their compliance with the city regulations, with the understanding that at unannounced times, inspectors will come into their places of business to check up on them and to see whether their reports are truthfully made out.

Investigations, Advisory Procedures, Warnings, Orders

Even more effective than ratings and required reports is the device of inves-

¹²See Trull, Edna, *The Administration of Regulatory Inspectional Services in American Cities*, Chicago, Public Administration Service, 1932, pp. 48, 49, 53, for sample rating sheets used for meat markets (San Jose, California), soda fountains (Hagerstown, Maryland), and barber shops (Hagerstown, Maryland).

tigations. When a particular retail store has been notoriously negligent in its compliance with city regulations, the offenders may still be saved from court action by the device of a thorough investigation, if such an investigation is carried on in a legitimate manner.

Investigations may then be followed by advisory procedures or by warnings and, finally, by formal orders to secure the desired compliance. If all these fail to get the desired compliance, the next step is to hale the offenders into court and subject them to the devices of judicial control.

DEVICES OF JUDICIAL CONTROL

It is possible in the space available to include only a brief analysis of judicial devices of control. The judicial devices here mentioned are: summonses, arrests, prosecutions, trials, convictions, fines, imprisonment.

All of these are obviously devices of punishment. Their ultimate objective is, however, not merely to punish, but to prevent the recurrence of violations in the future by the offenders.

In a typical American city there are several different kinds of courts, such as justice-of-the-peace courts, magistrates' courts, traffic courts, and others. Because of this wide variety, it is extremely difficult to give an adequate picture of judicial control in most cities.

On the other hand, there is a municipal court in the city of Chicago with thirty-seven justices, in which practically all of these various kinds of courts are merged into one, so that a study of the Chicago municipal court gives a very interesting picture of judicial control of retail trade in the second largest American city.

In this court each justice specializes in a particular type of case and, as a result of this specialization, practically all cases of violations of city ordinances governing retail trade come under the jurisdiction of only two or three out of the

total of thirty-seven justices. In Table VIII the estimated amount of time given by the court to violations of these ordinances is shown.

The Chicago municipal court is unique in that it is the largest single court in the world, handling as it does more cases and a greater variety of cases than any other similar court.

TAXING POWER

In the field of municipal control of retail trade, taxing power is next in importance to police power. The term, taxing power, has different meanings in different states. In some states a license fee is not considered a tax, while in other states there is no distinction between taxes and fees. Since the subject of municipal taxes, (including real estate taxes, personal property taxes, sales taxes, and others) is treated at great length in a considerable number of writings on the subject, it will not be discussed here.

MUNICIPAL COMPETITION

A very effective device of municipal control of retail trade is that of municipal competition. Independent of ordinances and police powers, some cities have gone into the business of retail selling, not with an idea of profit, but primarily to bring prices down for the benefit of their citizens.

MUNICIPAL COMPETITION IN MILWAUKEE

A considerable number of American cities have tried this device at various times, but the city which has accomplished the most along this line is Milwaukee, which, during the period from 1917 to 1921, sold over \$400,000 worth of goods at retail.

The entrance of the city into this field began in 1917 in connection with the local council of defense, partly to protect the families of soldiers in the war during a period of rising prices. The *Milwaukee Sentinel* of December 29, 1918, summarizes the results up to that

TABLE VIII

ESTIMATED AMOUNT OF TIME GIVEN BY THE CHICAGO MUNICIPAL COURT TO VIOLATIONS OF CITY ORDINANCES GOVERNING RETAIL TRADE IN THE CITY OF CHICAGO¹

VIOLATIONS OF CITY ORDINANCES GOVERNING PARTICULAR BUSINESSES	ESTIMATED AMOUNT OF TIME OF THE COURT REQUIRED FOR SUCH VIOLATIONS
Violations of the ordinance governing auctions and auctioneers	2 days a year
Automobile dealers, used car dealers, and gasoline stations	$\frac{1}{2}$ day a week
Junk dealers	4 days a year
Second-hand stores	2 days a year
Lumber yards and ice dealers	1 day a year
Druggists	1 day a year
Liquor stores, including saloons and drug stores selling liquor	1 day a week
For false weights and measures, coal short weight, pure food law violations and violations of ordinances governing meat markets ²	1 day a week
For violations of milk code	$\frac{1}{2}$ day a month
For violations of zoning, city planning, building codes, electrical, elevator, plumbing, water, sewer, and other engineering codes	1 day a week
For violations of traffic codes for movement of goods over streets and code for use of streets and alleys	$\frac{1}{2}$ day a month in the traffic court
Violations of laws protecting employees	2 days a month
Violations of city codes regulating minor highway privileges and outdoor advertising	1 $\frac{1}{2}$ days a month
One judge of the municipal court gives about all his time to personal property tax cases against small retail stores	(300 days a year)
Shop lifting cases	
Driveways across sidewalks	$\frac{1}{2}$ day a year

¹Tentative estimate by Judge Eugene Holland of the Chicago Municipal Court.

²"From April to November 17, 1931, the amount of fines paid by shortweight dealers in the city of Chicago was over \$7000." From speech of Deputy Sealer Frank W. Stinson of Chicago, before the Illinois Weights and Measures Convention at Springfield, Illinois, November 17, 1931.

time, which were confined to the selling of fish and potatoes. The city worked in coöperation with the State Conservation Commission which seined Lake Michigan for fish and sold them to the city. The city, in turn, retailed the fish at about six cents a pound while the ordinary price of fish in retail stores was about twenty-five cents. On one day, 12,000 pounds of fish were sold by the city before nine o'clock in the morning. As a result of this venture, retail prices soon came down to lower levels.

Shortly after the city had embarked in the fish business, Mayor Daniel W. Hoan noticed that a few Milwaukee firms had apparently monopolized the potato market so that potatoes were retailing

at about \$4.00 a bushel, or \$1.25 a peck. The mayor then bought several carloads of potatoes and started selling them at approximately 75 to 85 cents a peck, and soon brought retail prices down all over the city.

In these ventures, the mayor priced the goods to be sold so that the profit should be about 10 per cent on the approximate cost of goods sold.

After the close of the World War, the city of Milwaukee also entered the field of selling surplus military supplies. None of the municipal marketing ventures was ever conducted at a loss.

When the depression came in 1921, the city ceased all sales at lower prices because at that time prices were low

enough, and many retailers in Milwaukee were having difficulties.

EFFECTIVENESS OF THIS DEVICE

Most cities have never used this device of municipal competition to force lower prices, but there is no question as to its effectiveness. Statutes and ordinances can have little effect on demand and supply, but if the mayor of a city can go into the market and control a large supply of retail goods, he can effectively bring prices to lower levels.

In a time of severe competition among retailers, such as a depression period, the mark-up on food prices is usually small, so that there is little advantage in a city's trying to force them lower. In a depression period there is also the risk that the city officials may lose money on

the venture, which will reflect unfavorably against them.

The total of more than \$400,000 worth of goods sold by the mayor of Milwaukee from 1917 to 1921, for purposes of controlling retail prices, may seem small in comparison with the total retail sales in the city (\$353,894,370 in 1929 and \$178,740,000 in 1933), but the real test is not the volume of such sales. Milwaukee, it is claimed, engaged in each of these selling activities only just as far as was found necessary to keep prices of the necessities of life at reasonably low levels.

It is apparent, of course, that direct municipal competition may be subject to grave abuses and under bad management may be used for improper political ends.

CHAPTER SIX

CONCLUSIONS

As a result of the present study, a tentative set of conclusions has been formulated and may be set forth as follows:

1. American cities have enacted some one hundred different kinds of ordinances for the purpose of controlling retail trade in commodities, but in each of the approximately one hundred types, there are a great many varieties. It is difficult to find any two cities with ordinances of any one type which are exactly alike.

2. The present study is a preliminary survey of all these ordinances in the belief that such a survey will be of value to city officials, retail merchants, and students of municipal government, for purposes of further study and for formulating principles.

3. Taking the list of 120 activities of retailing into consideration, it is found that only about thirty of them are subject to municipal ordinances, but that

no particular city has ordinances to control more than twenty of them.

4. Of the approximately thirty retail trade activities which can be more or less controlled by city ordinances, most of them are of minor importance.

5. Of the list of 120 retail trade activities, about half of them are not typically subject to any form of government control in the United States.

6. In interviewing a considerable number of retail merchants while the study was in progress, it was found that most of them, at first, could think of very few ways in which municipal government controls their retail sales. It was found that most merchants give all their thought and attention to only about twenty or thirty elements of marketing activity.

7. A study of all of the various types of municipal ordinances to control retail trade leads to no final formulation as to

what should be the correct ordinances. Each particular type of municipal ordinance and its variations from city to city and from state to state, merely indicate the existence of a problem of municipal control of retailing toward the solution of which varying degrees of progress have been made.

8. Practically all the ordinances studied were enacted in the exercise of municipal police power to regulate retail trade for the general health, safety, and comfort of the public.

9. Policing retail trade in the public interest and levying license taxes for purposes of municipal income, are two distinct municipal activities. The former is direct control while the latter is an incidental form of control. Yet, some types of nuisance businesses are controlled by heavy fees which, although ordinarily called "license taxes", are sometimes of the nature of periodic penalties.

10. The levying or assessment of taxes is a different municipal activity from the collection of taxes. Both of these tax activities are economically distinct from the collection of license fees, although in some states all three activities are legally construed to be one and the same.

11. Of the several general theories of municipal license fees, the most logical is that which registers all types of retail business, yet levies a minimum nominal license fee; except in cases of obvious nuisance businesses, which may well be assessed heavy license fees as devices of control.

12. On the basis of the United States Census of Distribution, it was found that out of a list of some eighty different classifications of retail stores, about half as to types and about half as to volume of sales are typically subject to specially enacted policing ordinances.

13. The other half, as to number of types and volume of sales, are found to

be typically not subject to specially enacted policing ordinances.

14. Even though specially enacted policing ordinances for particular types of businesses can be found in a great many cities, very few cities have more than a score of such ordinances.

15. In most states the regulation of weights and measures by cities is under state supervision, but in a few states the only direct regulation (except in the case of state regulation of gasoline stations) is by means of municipal ordinances and inspections.

16. In such states there is a misunderstanding of the delegation of police power by the state to the municipal corporation. All police power where delegated to a city should be mandatory and never a discretionary power. States should exercise more administrative supervision over municipal corporations and should check up to see that they use the police powers delegated to them for the proper control of retail trade.

17. Of the municipal ordinances which have been sponsored by trade groups, as listed in Chapter Four, there are some twenty-five ordinances which might well be used by all American cities with such minor adjustments as are required to meet local conditions.

18. This does not mean that even, as regards one type of ordinance, a model ordinance can be formulated for all cities of the entire nation. It does indicate, however, that there are certain universal fields of control in which the American retail business world has found it better to have such municipal ordinances than not to have them.

19. Municipal control of retail trade is only one section of the larger subject of government control of business, but from the point of view of the majority of our population, the customers of retail stores, it is the most important part.

20. Municipal control of retail trade

is fundamentally a control of motion which includes movement of goods, customers, and communications over city streets and sidewalks.

THE ULTIMATE PURPOSE OF GOVERNMENT CONTROL OF RETAILING

The most pressing activity of the average American household is making a living. Most of the elements of a living are purchased in retail stores. When local government enacts ordinances to regulate and control retail trade and establishes administrative devices to enforce them, it is regulating and controlling the distribution of the elements of livelihood to each of its households and individuals.

Household welfare is, consequently, closely connected with local government.

A well administered local government can give its individual families low taxes, high quality of food and low prices, while a badly administered government may impose heavy burdens of high taxes and, through laxity in control of retail distribution, cause its people to pay high prices for low quality of commodities.

Thus, local control of retail trade is vital and important—much more vital than some of the abstractions of federal and state control. Municipal control and other forms of local control are actual and continuous; federal and state control, while undeniably real and ever-existent, are more remote and largely potential. Local control is a daily, hourly, and minute-by-minute happening, while federal and state control are more intermittent.

APPENDICES

Since the present study is predominantly a study of ordinances, it seems desirable, even in the limited space of the present summary, to present a few model ordinances as examples.

Three are shown here as follows:

Appendix A. The New York Model Ordinance for Awnings.

Appendix B. The New York Model Ordinance for Display of

Merchandise on Sidewalks.

Appendix C. The Jersey City Ordinance Prohibiting Distribution of Circulars, Handbills, etc.

In the later, more comprehensive study of this subject, it is planned to include model and sample ordinances for all of the list of ordinances in Chapter Four, recommended for adoption in all American cities.

APPENDIX A

MODEL ORDINANCE TO REGULATE THE CONSTRUCTION AND MAINTENANCE OF AWNINGS OVER SIDEWALKS OR OTHER PUBLIC PLACES

Prepared by the
NEW YORK STATE BUREAU OF MUNICIPAL INFORMATION
December 11, 1923

COMMITTEE REPORT

*To the New York State Conference of Mayors
and Other City Officials:*

The undersigned committee, appointed to prepare a Model Awning Ordinance, begs to submit the following report:

After studying ordinances now in effect in American cities and court decisions about the municipal regulations of awnings, we have prepared an ordinance which we believe will effectively regulate the construction and main-

tenance of awnings over sidewalks or other public places in any city in New York State. Attached is a copy of the ordinance.

WALTER N. GILL,
Corporation Counsel, Kingston
FRANCIS H. CAMERON,
City Attorney, Hornell
CHARLES C. CLARK,
Corporation Counsel, Long
Beach

An Ordinance to Regulate the Construction and Maintenance of Awnings Over Sidewalks or Other Public Places in the City of ———. The city of ——— in Common Council convened, ordains as follows:

Section 1. *Definitions.* The term "person" as used in this ordinance shall mean and include one or more persons of either sex, natural persons, corporations, partnerships, associations, joint stock companies, societies and all other entities of any kind capable of being sued.

Section 2. *Kind of Awnings Permitted.* No person shall hereafter erect or maintain any awning of any material except cloth or canvas over any sidewalk or other public place in the city of ———, except as hereinafter provided.

Section 3. *Location of Awnings.* All awnings of cloth or canvas, except temporary awnings as hereinafter provided for, hereafter constructed or maintained over any sidewalk or other public place shall be elevated at least six feet six inches at the lowest part thereof above the surface of the sidewalk and shall not project more than ——— feet beyond the building line and in no event beyond the curb. All such awnings shall be supported without posts by iron brackets or by iron frames attached to the building so as at all times to be safe and leave the sidewalk wholly unobstructed thereby, and so as to be lowered and raised with safety and convenience.

Section 4. *Removal of Awnings.* All awnings heretofore erected or constructed and operated in a manner different than that specified in this ordinance shall be removed by the owner, agent or person in possession or control of the building or part thereof to which such awning is attached, within five days after notice so to do from the ———.

Section 5. *Temporary Awnings.* Awnings without side curtains may be, from time to time, erected and maintained across the sidewalk of any street for temporary use, as a protection during inclement weather only; provided, however, that such awning shall be made of canvas or cloth and shall be supported by upright posts of iron not exceeding two inches in diameter and not less than eight feet or more than ten feet in height above the sidewalk and shall not be wider than the entrance of the building in connection with which it is to be used. Awnings with side curtains may be erected for a limited time upon issuance of a special permit by the ———.

Section 6. *General Regulations.* Every owner or occupant of any building shall at all times keep the awning in front of such building free from ice, snow, dirt or other obstructions. Merchandise or other obstructions shall not be suspended from any awning over any sidewalk.

No awning of wood shall be erected or maintained so as to project over any sidewalk or other public place, and no awning of glass or metal shall be so erected or maintained without the consent of the ———.

Section 7. *Penalties.* Any person who shall violate any of the provisions of this ordinance or refuse or neglect to comply with any order made thereunder, shall, upon conviction, be punished by a fine of not less than \$ ——— or more than \$ ——— and each day upon which such violation continues shall constitute a separate offense.

Section 8. Any ordinance or part of an ordinance inconsistent with the provisions of this ordinance is hereby repealed.

Section 9. This ordinance shall take effect ———.

APPENDIX B

MODEL ORDINANCE REGULATING USE OF SIDEWALKS FOR MERCHANDISE

Prepared by the

NEW YORK STATE BUREAU OF MUNICIPAL INFORMATION

October 7, 1930

COMMITTEE REPORT

To the New York State Conference of Mayors and Other Municipal Officials:

We herewith submit a model ordinance to regulate the use of sidewalks for merchandise and other materials which we, with the aid

of the State Bureau of Municipal Information, have prepared upon your request.

Our study of ordinances upon this subject and in effect in American cities revealed the fact that some municipalities absolutely prohibit merchandise on sidewalks under all con-

ditions, others permit a limited storage on a certain portion of the sidewalk but prohibit exhibition for sale, and still others permit limited storage and exhibition within a limited space. A few limit the regulation adopted to certain streets or sections. We have therefore prepared the model so that it may be used to produce any degree of regulation desired.

Respectfully submitted,

J. SAMUEL FOWLER,

Corporation Counsel, James-town

PATRICK J. ROONEY,

Corporation Counsel, New Rochelle

VICTOR F. BOIRE,

Corporation Counsel, Plattsburgh

* * *

An Ordinance Regulating the Use of Sidewalks for Merchandise and Other Materials in the City (Village) of _____

The city of _____, in Common Council convened, ordains as follows:

Section 1. *Use of Sidewalks.* It shall be unlawful for any person to store, pile, deposit, erect, keep or place, or cause, permit or suffer to be stored, piled, deposited, erected, kept or placed upon any sidewalk in the city (village) of _____ any rubbish, wood, coal, boxes, barrels, stone, brick, lumber, dirt, merchandise, shipping case, stand, stall, booth or show case or other obstruction of any kind, except as herein or otherwise provided by law or ordinance.

Section 2. *Use of Sidewalks for Display of Merchandise.* It shall be lawful for any person, during the time his store or building is open for business, to place or set out for exhibition any goods, wares or merchandise directly connected with the business transacted by him, on the sidewalk in front of a place of business, store, or building owned, controlled or occupied by him for a distance of only _____ feet (usually from eighteen inches to four feet) of such store or building, and not to exceed a height of more than _____ feet (usually four feet) from the level of the pavement. All foodstuffs when displayed as above provided shall be at least two feet above the level of the sidewalk and properly protected from flies, dust, and dirt.

Section 3. *Receiving or Delivering Goods.*

It shall be lawful for any person to place or keep any goods, wares, merchandise, baggage or any articles of personal property which he may be receiving or delivering, and to unpack and remove the contents of any box, barrel, or other receptacle, only on that part of any sidewalk next to the curb line not exceeding four feet in width and in front only of the store or building he owns, controls, or occupies, but such goods, wares or merchandise shall not remain on such part of the sidewalk for a longer period than two hours or at night, on Sunday or any legal holiday.

Section 4. *Suspending Merchandise in Streets.* It shall be unlawful for any person to hang out or suspend over any street any goods, wares or merchandise in front of his store, house or other building at a greater distance therefrom than _____ feet (usually eighteen inches to four feet) or at a greater height than four feet from the level of the sidewalk. All such articles so hung or suspended must be so fastened as not to swing over the street or sidewalk beyond the said _____ feet.

Section 5. *Exposing Merchandise from Balcony.* It shall be unlawful for any person to place or expose or cause, permit, or suffer to be placed or exposed to show or for sale any goods, wares, or merchandise upon or from any balcony.

Section 6. *Carcass Hanging Over Sidewalks.* It shall be unlawful for any person to hang up or keep or to cause, permit, or suffer to be hung up or kept the carcass of any animal, except fish and poultry, or any part thereof, for exhibition or sale, or any purpose in, upon, or over any sidewalk.

Section 7. *Receiving Merchandise Through Openings in Streets.* It shall be unlawful for any person to receive or deliver or to cause or permit to be received or delivered any goods, wares, or merchandise through any trap or opening in or upon any street or sidewalk between the hours of _____ of any day.

Section 8. *Construction of Ordinance.* (1) Nothing contained in this ordinance shall be construed to prevent the moving of goods, wares, and merchandise across any sidewalk in the way of trade or for the use of families.

(2) Nothing herein contained shall be construed as giving authority to any owner or occupant of any premise to let, sub-let, rent,

lease, or grant any of the sidewalk space for business stands of any kind or for any purpose whatsoever; and any person so found doing business may be summarily removed by the _____ and be deemed a violator of this ordinance.

(If it is desired to prohibit all use of the sidewalk except for the limited storage of goods to be delivered only the following section is necessary.)

Section 1. *Use of Sidewalks.* It shall be unlawful for any person to leave or deposit or cause or permit to be left or deposited any goods, wares, and merchandise upon any sidewalk, except such articles may be deposited inside and within four feet of the curb and not piled to a greater height than four feet, for not more than two hours while receiving the same in original packages or when in packages for delivery after actual sale thereof.

(If it is desired to prohibit all storage and exhibition on sidewalks, only the following section is necessary.)

Section 1. *Use of Sidewalks.* It shall be unlawful for any person to erect or maintain or cause or permit to be erected or maintained on any sidewalk in the city (village) of _____ any bench, table, showcase or other structure for the display of goods, wares or merchandise, or to set or place or cause or permit to be set or placed any goods, wares,

or merchandise or other articles, by way of exposing the same for sale or otherwise upon or over any sidewalk or public place; provided, however, that this section shall not be construed to prohibit merchants and others from the free use of the sidewalks and public places in common with others in conveying merchandise and other property to and from their stores and places of business while engaged in receiving or delivering the same.

Section 9. *Definition.* The word "person" when used in this ordinance, shall mean and include one or more persons of either sex, natural persons, corporations, partnerships, associations, joint stock companies, societies and all other entities of any kind capable of being sued.

Section 10. *Penalty.* Any person who himself, or itself, or by his or its agent or employee, shall violate any of the provisions of this ordinance, shall, upon conviction thereof, be subject to a fine of not less than \$—— or more than \$—— or to imprisonment, for not less than —— or more than ——, or to both such fine and imprisonment, and each day on which such violation continues shall constitute a separate offense.

Section 11. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section 12. This ordinance shall take effect _____.

APPENDIX C

AN ORDINANCE to regulate the distribution of newspapers, papers, periodicals, books, magazines, circulars, cards and pamphlets.

The Board of Commissioners of the Mayor and Aldermen of Jersey City do ordain:

1. No person shall distribute or cause to be distributed or strewn about any street or public place any newspaper, paper, periodical, book, magazine, circular, card or pamphlet.

2. No person shall distribute or cause to be distributed to the occupants of any house, place or cause to be placed into any areaway, in front of, or along the side of any house, or upon the doorstep thereof any newspaper, paper, periodical, book, magazine, circular, card or pamphlet, unless the same has been previously ordered by

the person in actual occupation of the house, in the areaway of which, in front of which, or along the side or doorstep of which said newspaper, paper, periodical, book, magazine, circular, card or pamphlet shall be distributed or placed.

3. Any person violating or causing to be violated, or consenting to, or permitting the violation of any of the provisions of this ordinance shall, upon conviction thereof, be liable or subject to a fine of not exceeding ten (\$10.00) dollars, or imprisonment for a period of not exceeding ten (10) days in the city prison or the county jail, in accordance with the statutes in such cases made and provided, or both, for the first offense, and a fine of twenty-

five (\$25.00) dollars or imprisonment not exceeding thirty (30) days, or both, for each and every subsequent offense.

4. Any complaint regarding the violation of any of the provisions of this ordinance shall be cognizable before the police courts of this city.

5. This ordinance shall take effect immediately.

MICHAEL I. FAGEN
WM. B. QUINN
JOHN SAUL
A. HARRY MOORE
FRANK HAGUE

Commissioners

Passed: January 22, 1924.

EDWARD J. HOLLAND
City Clerk

APPENDIX D

SELECTED BIBLIOGRAPHY

The following list of books, articles, bulletins, and other materials on subjects relating to municipal control of retail trade has been compiled for the convenience of readers.

ABBOTT, Frank Frost, *The Common People of Ancient Rome*. New York, Charles Scribner's Sons, 1911. The seventh essay in this book, entitled "Diocletian's Edict and the High Cost of Living," gives an analysis of a decree of one of the Emperors of the city-state of Rome, intended to fix prices.

AMERICAN CHILD HEALTH ASSOCIATION, *A Health Survey of 86 Cities*. New York, 1925. This survey includes comparative information for the year 1923 of municipal control of quality of food. An analysis is shown of the number of food inspections in most of the 86 cities for the year 1923. Also shown is the total percentage of milk pasteurized in most of the cities for that year.

AMERICAN MUNICIPAL ASSOCIATION, *Charges Made by Cities for Minor Highway Privileges*. 850 East 58th St., Chicago, Illinois: Report No. 56, Nov. 1933. 35 pages. Gives the charges of a number of cities for signs, awnings, canopies, sidewalk vaults, fire escapes, cornice projections, marquees, balconies, lamps, hoisting devices, clocks, lettering in sidewalks, openings in streets or sidewalks, feeding horses on streets, raising or lowering sales banners, flag poles, merchandise stands, barber poles, show cases on sidewalks, boot-black stands, gasoline tanks, wires across streets.

———, *List of Publications of State Leagues of Municipalities*. 850 East 58th St., Chicago, Illinois: Report No. 108, May 1935. 59 Pages. In it may be found a considerable number of monographs related to municipal control of retail trade.

———, *Ordinances Regulating the Dis-*

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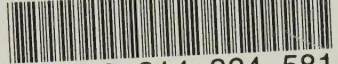
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UIC-REC'D	MAY 29 2015		
UIC-REC'D	JUN 16 2015		
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